

Volume 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

OWEN DIAZ,

Plaintiff,

VS.

TESLA, INC. dba TESLA MOTORS,
INC.,

Defendant.

NO. C 17-06748 WHO

San Francisco, California
Tuesday, March 28, 2023

TRANSCRIPT OF TRIAL PROCEEDINGS

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United States District Court - Official Reporter

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8:01 a.m.

P R O C E E D I N G S

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THE CLERK: Please come to order.

THE COURT: Good morning, everybody. Please be seated.

(Pause in proceedings.)

THE COURT: All right. With respect to the objections that were filed by the Plaintiffs to the opening statement, I do -- I think they were waived, first of all. I'm not going to give an instruction that is specific to Mr. Martinez or to the other specific challenges that were raised.

I am going to remind everybody what their role is in this case. I'm going to repeat that it is to determine the amount of damages to which Mr. Diaz is entitled. He has the burden to prove that amount by the preponderance of the evidence.

It's been established he's entitled to both compensatory and punitive damages. It's for the jury to determine the amount and remember, as I said yesterday, what the lawyers argue is not evidence. You'll be given written versions of the instructions at the end of the case. They govern the law, not what the lawyers say about them.

So that's what I'm going to do at the start.

MR. SPIRO: Just -- the Defense would like an exception to that. From our perspective, the Court has given

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1 preliminary instructions, after we sat down, of openings.

2 The Court reminded the jury again that what lawyers say is
3 not evidence, and to then have them before the first witness be
4 instructed yet again, we think is prejudicial. And so we're
5 going to take an exception to that.

6 **THE COURT:** Great. What else?

7 **MR. ORGAN:** Yes, Your Honor. Just to preview, as I
8 have done previously with the Court, we do have a 106 issue
9 with Mr. Romero later today.

10 106 is the e-mail that he sent to HR about hearing the
11 N-word and -- just wanted to make the Court aware of that, that
12 that will be coming up today. 106 was admitted last time which
13 is different than 109 which was the graffiti one.

14 **THE COURT:** Okay. And I'll look for it.

15 **MR. ORGAN:** Okay.

16 **THE COURT:** When it comes up.

17 **MR. ORGAN:** Okay.

18 **MR. GRIFFIN:** Your Honor, can we respond to that?

19 **THE COURT:** Go.

20 **MR. GRIFFIN:** This is the issue that was raised last
21 week by Mr. Spiro in pretrial, and Exhibit 106 was not
22 admitted. It was admitted for impeachment purposes only, and
23 for the purpose of the deposition -- of the testimony today, we
24 think that should be -- it's only an impeachment document.

25 So they need to establish a basis for the impeachment

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1 before they can even show or use that witness -- that exhibit
2 at all, and that's what we want to be sure of because it's our
3 concern that they're trying to induce impeachment to put a
4 document in the record that wasn't properly --

5 **THE COURT:** Right. You all have prefaced what's going
6 to be coming. And I'm going to have to rule on it based on the
7 context of what comes.

8 **MR. COLLIER:** Your Honor, I also just wanted to raise
9 an issue. Does this work?

10 **THE CLERK:** Yes.

11 **MR. COLLIER:** We have Amy Oppenheimer, the HR expert,
12 testifying today. Typically, experts are exempt from the
13 witness exclusion and that's true under Your Honor's standing
14 order. So Ms. Oppenheimer was planning to arrive and watch
15 some of the testimony before she testifies. I just wanted to
16 make sure that Your Honor was aware of that and didn't have a
17 problem with that.

18 **THE COURT:** No. That's fine.
19 Anything else that we ought to talk about today?

20 **MR. ORGAN:** Oh, there is one thing, Your Honor.

21 **THE COURT:** Get to the mic, Mr. Organ.

22 **MR. ORGAN:** Sorry. Apologize, Your Honor.

23 Mr. Kawasaki texted us. Apparently, there's an accident
24 on the Bay Bridge. His arrival time was supposed to be 8:10,
25 so I don't think it will be a problem. But there might be

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1 issues with the jury, too, because the Bay Bridge apparently
2 has --

3 **THE COURT:** There may be problems with the jury, but
4 we'll start as soon as the jury is ready.

5 **MR. ORGAN:** Okay. Thank you, Your Honor.

6 **THE COURT:** Okay. All right. See you when everybody
7 is here.

8 (Recess taken at 8:05 a.m.)

9 (Proceedings resumed at 8:31 a.m.)

10 **THE COURT:** We have a jury. Are you ready to proceed?

11 **MR. ORGAN:** Yes, Your Honor.

12 **MR. SPIRO:** Yes, Your Honor.

13 **THE COURT:** Let's get the jury and get going.

14 (Pause in proceedings.)

15 (Proceedings were heard in the presence of the jury:)

16 **THE COURT:** All right. Please be seated, everybody.

17 Good morning, ladies and gentlemen. Thank you for being
18 so prompt this morning with the weather as it is. So we're now
19 going to proceed with the trial. I just want to remind you
20 that your role in this case is going to be to determine the
21 amount of damages to which Mr. Diaz is entitled. He has the
22 burden to prove that amount by a preponderance of the evidence.

23 It's been established that he's entitled to both
24 compensatory and punitive damages. It's for you to determine
25 the amount. And remember, as I told you yesterday, what the

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1 lawyers argue and say is not evidence. You'll get a written
2 version of the instructions that I gave you earlier at the end
3 of the case, and they govern the law in the case. Not what the
4 lawyers say about them.

5 So with that, Mr. Organ, who's the first witness?

6 **MR. ORGAN:** Your Honor, the Plaintiff calls Tamotsu
7 Kawasaki.

8 **THE COURT:** Okay.

9 (Pause in proceedings.)

10 **THE COURT:** Please step up, Mr. Kawasaki.

11 **THE CLERK:** If you will step up and remain standing.
12 I'm going to take your photograph.

13 **THE WITNESS:** Mask or no mask?

14 **THE CLERK:** You can take your mask off if you have
15 been vaccinated. Raise your right hand.

16 **TAMOTSU KAWASAKI,**
17 called as a witness for the Plaintiff, having been duly sworn,
18 testified as follows:

19 **THE CLERK:** Please state your full name for the court
20 reporter.

21 **THE WITNESS:** Tamotsu Edwen Kawasaki. That's
22 T-A-M-O-T-S-U, E-D-W-E-N, Kawasaki, like the motorcycle,
23 K-A-W-A-S-A-K-I.

24 \\\

25 \\\

KAWASAKI - DIRECT / ORGAN**DIRECT EXAMINATION**

BY MR. ORGAN:

Q. Good morning, Mr. Kawasaki. How are you?

A. I'm good.

Q. Do you go by "Tom" typically?

A. Tom is easier. It's just more American. Tamotsu is hard to pronounce, and people butcher my name all the time, so, yeah, Tom is easier.

THE COURT: Mr. Kawasaki, if you would slow down just a little bit, that would be great.

THE WITNESS: Sorry.

BY MR. ORGAN:

Q. Where did you grow up?

A. Daly City, California.

Q. Are you married?

A. Yes.

Q. And do you have kids?

A. Yes.

Q. What do you do for a living now?

A. I'm a plumber now. I actually started my own plumbing business here in the Bay Area.

Q. At some point in time, did you work at Tesla?

A. Yes.

Q. In what position were you hired in Tesla?

A. I was hired as a sorter.

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1 Q. And could you explain to the jury, what's a sorter?

2 A. I was just pretty much just breaking down cardboard,
3 sorting cardboard from plastic, and stuff like that. It wasn't
4 nothing fancy. I was hired through a staffing agency. I
5 actually just moved back from Texas and picked up any job I
6 could get.

7 Q. When you were hired to work at the Tesla factory, did you
8 receive any training from Tesla on race harassment issues?

9 A. There was no training. I actually got hired through a
10 staffing agency, Chartwell. And I actually did my paperwork in
11 Hayward, and then they sent me that day to Tesla and said,
12 "This is where you go, and somebody will meet you in the front
13 to let you in."

14 Q. Okay. And what kind of shifts were you working?

15 A. In the beginning I worked the day shift, and then
16 eventually I got moved to the overnight shift, which was
17 two shifts, two 12-hour shifts.

18 Q. Did you know a man named Victor Quintero?

19 A. Eventually at the -- when I got put in a higher position,
20 Victor Quintero was somebody I was told to send e-mails to, and
21 that was my head lead for environmental sustainability for
22 Tesla.

23 Q. So you received a promotion then?

24 A. Yes.

25 Q. And what was your promotion to?

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1 **A.** I promoted -- I was actually lead, and then I promoted to
2 running cardboard and then lead elevator operator.

3 **Q.** Okay. And could you explain to the jury, what are the
4 elevators that you were lead elevator operator?

5 **A.** The elevators are where material goes up and down in the
6 production facility where -- if the elevators don't stop
7 running, production stops and money gets lost. So, it's a
8 constant moving system. If you don't get product up to the
9 lines or you don't get product down, the warehouse tends to get
10 put on pause or holds.

11 **Q.** So would it be fair to say that the elevators are a key
12 component of the car factory?

13 **A.** You would say it's a very key component because if you
14 don't have product going up or down to these lines, then stuff
15 gets stopped and production stops.

16 **Q.** Okay. Did you ever know a man named Owen Diaz?

17 **A.** Yes.

18 **Q.** And how did you know Mr. Diaz?

19 **A.** Me and Mr. Diaz worked together, and then when I became
20 elevator lead, Victor Quintero and Jaime Salazar asked me who
21 would I feel would be a great in a position there.

22 I was working with Owen. He was just there, and he came
23 to work every day and worked hard. So when I became lead, I
24 said, "I want that man in the position for me to fill."

25 **Q.** So Owen took over your position then?

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1 **A.** Owen took over my spot. When I became lead of the
2 elevators, he took over my spot as an elevator operator.

3 (The reporter requested the witness to speak slower.)

4 **THE COURT:** It's fine. It's an unnatural thing to be
5 doing --

6 **THE WITNESS:** Yeah.

7 **THE COURT:** -- but just take your time, and it will
8 be --

9 **THE WITNESS:** It's just normal talking. I'm talking
10 normal, so I have to slow down my speech. I'm sorry.

11 **BY MR. ORGAN:**

12 **Q.** Okay. And do you fix plumbing problems as fast as you
13 talk?

14 **A.** I try to. The faster I get in, the faster I get out is
15 the more money I make, right. So yeah, it's one of those
16 things, right, you don't want to be in there too long.

17 **Q.** I'm sure your customers appreciate that.

18 **A.** Yeah.

19 **Q.** I'd like to take you back in time to July 31 of 2015.
20 What is your role relative to Owen Diaz at the end of the
21 July 2015?

22 **A.** July 2015, um, I could be elevator lead. I'm not too
23 sure. I might have been transferred over to shift lead. I'm
24 not too sure. You got to recollect my memory. It's been over
25 eight years.

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1 **Q.** Okay.

2 **A.** I do something new now, so.

3 **Q.** I actually do.

4 **MR. ORGAN:** So if we could show Exhibit 38.
5 Exhibit 38 is admitted, I believe, Your Honor?

6 **THE COURT:** The --

7 **MR. SPIRO:** There is no issue.

8 **THE COURT:** Okay. It's admitted and may be shown to
9 the jury.

10 (Trial Exhibit 38 received in evidence.)

11 **THE COURT:** Let's -- are there -- is there agreement
12 on the admission of -- of all of the evidence with the
13 exception of the one that we were discussing this morning?

14 **MR. SPIRO:** Yes. I don't know exactly what exhibits
15 they are using, but it's in terms of what we discussed
16 previously in these proceedings. Those exhibits no issue.

17 **THE COURT:** Okay. Yes. So please go ahead.

18 **MR. ORGAN:** I'm only using exhibits that have been
19 admitted.

20 **THE COURT:** Please go ahead.

21 **MR. ORGAN:** Okay. Exhibit 38, please. And then if
22 you can zoom in on the --

23 **BY MR. ORGAN:**

24 **Q.** So this is an e-mail that you sent on July 31, 2015; is
25 that right?

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1 **A.** Yes.

2 **Q.** And does this refresh your recollection as to what your
3 position was at that time?

4 **A.** Yeah. At this time I was in a position -- I was actually
5 the lead of all overnight environmental sustainability. So I
6 was actually head of about 20, 30 people at that time.

7 **Q.** And who is Ed Romero that you're sending this to?

8 **A.** Ed Romero was somebody that was brought in maybe, I want
9 to say, maybe a month, month and a half prior to this.

10 Victor and Jaime said he is actually going to be the
11 person that I correlate and add on my e-mails. So he was
12 pretty much taking over the position. I want to say he was
13 supervisor of the whole environmental sustainability, so they
14 put it onto him, okay, I would say.

15 **Q.** Okay. And what was Victor Quintero's role at this point
16 in time?

17 **A.** So Ed pretty much got put in the link of chain, right, so
18 it was -- right before, it was Jaime, Victor, and that was the
19 chain of command that I responded to. And then Edward was
20 thrown into the mix, and they said add him onto your e-mails
21 now, and he was actually put into the mix as one of the
22 higher-ups.

23 **Q.** Okay. So if I have this right, you have above you is Ed
24 Romero. Then Jaime --

25 **A.** Salazar.

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1 Q. -- Salazar, and then Victor Quintero; is that right?

2 A. Correct, yes.

3 Q. Okay. And if you read this e-mail, what's this incident
4 about? What happened?

5 A. So this incident was about Owen. He was having an
6 incident with another employee -- that they actually got into
7 the elevators. They worked together as another employee, and I
8 was actually running around the facility. And Owen had called
9 me saying he was having an altercation with this employee, and
10 when I pulled up, they were in each other's face.

11 I spread them apart, and then I actually talked to people
12 around, and they said that the employee was throwing racial
13 slurs at him.

14 Q. Okay. So Owen called you up to call you over to this
15 incident?

16 A. Yes. Owen called me.

17 Q. Okay. And then when you got there, what did you see?

18 A. I just seen them face to face. I actually pulled up
19 because I was on the other side of the warehouse. The
20 warehouse is pretty big, and I was just monitoring every
21 position. Like I said, I controlled the whole -- the whole
22 warehouse overnight for the environmental sustainability. So I
23 had to make sure that everybody was actually doing what they
24 were supposed to do and move around.

25 And then he gave me call, so I immediately went to the

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1 elevators, and they were actually face to face, and I ended up
2 separating them and putting them one way or on the other side
3 of the elevators in this way and said -- there was people
4 around, obviously, looking at what was going on. I said, "What
5 happened?" and they said he was just throwing racial slurs at
6 Owen and --

7 **Q.** Okay. Did you talk to Owen?

8 **A.** Yes. So I talked to both of them and a couple parties
9 around and said what actually -- because I wasn't there, so I
10 didn't know what happened, but I just -- like I said, when I
11 pulled up, they were face to face, actually, about to probably
12 get into a fight. When I pulled up, they separated, so...

13 **Q.** Okay. And what did Owen tell you happened?

14 **A.** Owen said he was throwing up the N-bomb and stuff like
15 that, and other people in the area said, yes, he was throwing
16 racial slurs at him. And yeah, stuff like that.

17 So in my e-mail, I put racial in nature because that was
18 just the best professional way I could type it up in an e-mail
19 without throwing the N-word out there.

20 **Q.** So July 31, 2015, there was an interaction between Owen
21 and Judy Timbreza; is that correct?

22 **A.** Yes.

23 **Q.** And during -- Owen told you that he had been called the
24 N-word -- or you called it the N-bomb; is that right?

25 **A.** Yeah, yeah. The N-word. Yeah. Just...

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1 **Q.** Okay. Did Owen say the N-word, or did he say the N-bomb?

2 **A.** He said the N-word.

3 **Q.** Okay. But you call it N-bomb; right?

4 **A.** Yeah. It's just -- yeah.

5 **Q.** Okay. And then you said that -- that the people around
6 that confirmed that racial slurs had been thrown. That's what
7 you said; right?

8 **A.** Yes.

9 **Q.** So the people around confirmed that Judy Timbreza had used
10 racial slurs towards Mr. Diaz; right?

11 **A.** Yes.

12 (Pause in proceedings.)

13 **BY MR. ORGAN:**

14 **Q.** So if Tesla represented that Mr. Diaz had never complained
15 about the N-word, would that be accurate?

16 **A.** No. Because it's in my e-mail that he was actually being
17 slurred at racially, and I put it in my e-mail. I actually
18 sent Judy Timbreza home that night because they worked the same
19 shift, and I had nowhere else to put him. So I sent him home
20 to de-escalate the situation.

21 **Q.** Did you send Judy Timbreza home because he'd been using
22 racial slurs?

23 **A.** Because he was using racial slurs, and actually, when I
24 talked to people, it was just best to send him home. Like I
25 said, I had nowhere else to put him in the warehouse. He was

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1 actually hired to do elevators, not anything else, so I had to
2 send him home for the night.

3 **Q.** Okay. And if Tesla had represented that the people who
4 were around there, the witnesses, were not able to confirm
5 racial slurs, was that accurate?

6 **A.** I -- I don't know what they confirmed or not. Like I
7 said, I forwarded everything in the e-mail, best that I could,
8 to the higher-ups. And what they did with it after that, I had
9 no control over.

10 **Q.** Now, did you have some conversations with Ed Romero after
11 you sent Exhibit 38?

12 **A.** Yes. I believe we met, I want to say, either the next
13 morning or maybe two -- I'm not sure. I've got to recollect my
14 memory. I know it's all in e-mail form. I believe he e-mailed
15 me about meeting, I believe, in one of the cafeteria locations.
16 I just can't recollect my memory of when it was.

17 **Q.** Okay. Let's -- let's go to Exhibit 37.

18 **MR. ORGAN:** I believe 37 is admitted, Your Honor.

19 **BY MR. ORGAN:**

20 **Q.** Now, if you look at Exhibit 37, just look at the first
21 part. It says: "As we discussed in our discussion on Friday."

22 Does that refresh your recollection --

23 **A.** Yes.

24 **Q.** -- about --

25 **A.** Yes.

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1 Q. -- having a discussion with Ed Romero on Friday, the 31st?

2 A. Yes.

3 Q. Okay.

4 A. So that was probably the morning of this because I worked
5 overnight, and we overlapped about an hour and a half, both, so
6 we can correlate with our other leads in the morning: "Hey,
7 this is what's going on. This is where we're behind. This is
8 where we're at." So we overlap shifts.

9 Q. Okay. But your e-mail was sent at 2:15 p.m.

10 Do you see that?

11 A. Yeah. It could have been me responding to him after the
12 fact. Like I said, I don't -- I was running the shift, so I
13 don't answer my e-mails right then and there. It was probably
14 something I responded after the fact.

15 Q. Let's go back to Exhibit 38. What I'm talking about is on
16 Exhibit 38, you sent the e-mail about the -- about Owen being
17 called the N-word or racist in nature, comments racist in
18 nature. You sent that on July 31 at 2:15 p.m. That would have
19 been after your shift was over; right?

20 A. Yes.

21 Q. Okay. And I have to ask you: Since Mr. Diaz told you
22 that he had been called the N-word, why didn't you put that,
23 the N-word, in your e-mail, Exhibit 38?

24 A. Because I didn't -- at that time I was just new to the
25 shift. I didn't think that was professional to throw that in

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1 the e-mail, so I just put a base circumference of racial in
2 nature. And, I mean, I think that takes care of itself; right?

3 **Q.** Okay. And then so if we go back to Exhibit 37 now, you
4 see this is the next morning at 8:15 a.m. Ed is sending you an
5 e-mail where he references that he must have had a conversation
6 with you after you sent that 2:15 e-mail.

7 **A.** I believe he gave me a call, and he came in that morning
8 and met me at the office. Like I said, this has been over
9 eight years. I can't -- you've got to recollect -- but he
10 actually forwarded the e-mail to me, so I'm pretty sure we met
11 in the cafeteria and discussed what happened?

12 Like I said, Ed came in, and he was actually the new
13 person that we had to talk to before we sent it up. He
14 actually jumped into the chain of command.

15 **Q.** Okay. So you recall at least having a meeting physically
16 with Mr. Romero?

17 **A.** Yes.

18 **Q.** Is that right?

19 **A.** I believe we met in one of the cafeterias and discussed
20 what happened and why I made the decision to send Judy Timbreza
21 home for the night.

22 **Q.** Okay. So when you talked to Mr. Romero, did you mention
23 to Mr. Romero that Owen Diaz had been called the N-word?

24 **A.** Yes. I told him that racial slurs were thrown as I talked
25 to people that were around. It -- and he said he was going to

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1 do his own investigation and figure out what happened.

2 **Q.** So you -- you informed Mr. Romero both about the nature of
3 the racial slurs and that people had confirmed it; is that
4 correct?

5 **A.** Yes.

6 **Q.** Okay. So -- so Romero knew both of those facts?

7 **A.** Yes.

8 **Q.** Okay. Let's go on to Exhibit 39.

9 **MR. ORGAN:** And, Your Honor, Exhibit 39 is admitted.

10 **THE COURT:** All right. And so all of the exhibits
11 that you are showing, I believe, are going to be admitted
12 with -- unless I hear an objection --

13 **MR. SPIRO:** Yes, Your Honor.

14 **THE COURT:** -- from the defense.

15 **MR. ORGAN:** Thank you, Your Honor.

16 (Trial Exhibit 39 received in evidence.)

17 **BY MR. ORGAN:**

18 **Q.** So this -- if you see, this is an e-mail on August 4.

19 Do you see that?

20 **A.** Uh-huh.

21 **Q.** This is from Ed Romero to Victor Quintero.

22 Do you see that?

23 **A.** Yes.

24 **Q.** And you're not copied on this e-mail?

25 **A.** No. I wasn't privy to any of this e-mail, so this is the

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1 first time I'm seeing this e-mail.

2 **Q.** Okay. And if you look at this -- this statement here, the
3 second statement -- well, the first statement is: "On July 31,
4 Owen Diaz complained that Judy Timbreza had made some racially
5 offensive remarks toward Owen."

6 That's true; correct?

7 **A.** That is true.

8 **Q.** It does not include the fact that Mr. Diaz had said he'd
9 been called the N-word, which you had told Mr. Romero by that
10 time?

11 **A.** Yes.

12 **MR. SPIRO:** Objection. Misstates the testimony. He
13 said not been.

14 **THE COURT:** It's a leading question anyway. So
15 sustained.

16 **MR. ORGAN:** I'll rephrase it.

17 **BY MR. ORGAN:**

18 **Q.** At this point in time, August 4, had you told Mr. Romero
19 that Owen Diaz had been called the N-word before that?

20 **A.** Yes. Because we had our conversation in the morning about
21 what happened that night.

22 **Q.** Okay.

23 **A.** And like I said, I wasn't privy to this e-mail.

24 Obviously, I'm not copied on it, so this is something that I'm
25 not aware of it.

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1 Q. Look at the next sentence: "We investigated by speaking
2 to all witnesses present, but they said they did not hear the
3 remarks."

4 Is that consistent with what you had told Mr. Romero?

5 A. Like I said, I don't know what investigation they did
6 after the fact. Obviously, I wasn't copied on this e-mail, so
7 I wasn't privy to any of this information.

8 I don't know what investigation he did. All I can say, I
9 never seen Mr. Edward Romero on the overnight shift, so I don't
10 know who he talked to; and I can't confirm who he did his
11 investigation with.

12 Q. Were you ever interviewed by Mr. Romero or anyone else
13 about any additional things relating to this Timbreza incident?

14 A. Interviewed? You mean having a meeting with him after
15 this situation about it?

16 Q. Yeah.

17 A. No. I was never interviewed after that.

18 Q. Okay.

19 A. I sent the information the next day we had our meeting,
20 and he did what he did, and I believe -- I believe after this,
21 he gave me some paperwork for Mr. Timbreza to sign to file with
22 nextSource staffing.

23 Q. Okay. Okay.

24 A. I believe.

25 Q. Oh, so the paperwork -- you had to give some paperwork to

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1 Mr. Timbreza?

2 **A.** Yeah. So I know for a fact I had to have Mr. Timbreza
3 sign a verbal paperwork saying this is his first verbal
4 warning, and they had a rule that three verbal warnings you
5 were laid off after three offenses.

6 **Q.** Okay. The paperwork, was it on Tesla letterhead or was it
7 on --

8 **A.** It was actually nextSource staffing letterhead. It wasn't
9 Tesla. It was nextSource. That's who Mr. Romero worked for
10 when he first got hired was nextSource staffing.

11 **Q.** And are you aware of any kind of warning that was given to
12 Mr. Timbreza by Tesla?

13 **A.** No, I'm not aware of that. I just know I had --
14 Mr. Romero had given me some paperwork from nextSource to have
15 him sign. And it was filed with nextSource, that's what I was
16 told.

17 **Q.** If you could, look at Exhibit 222, please.

18 This is not to you, but I'm wondering if this refreshes
19 your recollection about the time that Mr. Diaz got a promotion
20 to the lead position?

21 **A.** Yeah. That could be probably around the same time that I
22 had the conversation with Victor and Jaime because they asked
23 me who I wanted to run the elevator, and I said, "Owen Diaz."
24 I wanted him to run the elevators.

25 **Q.** Okay. And do I have to ask to be -- to have admitted,

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1 Your Honor, or?

2 **THE COURT:** It's admitted.

3 (Trial Exhibit 222 received in evidence.)

4 **MR. ORGAN:** Okay. Thank you.

5 And then let's go to Exhibit 235. I would like to admit
6 235, Your Honor?

7 **THE COURT:** It's admitted.

8 (Trial Exhibit 235 received in evidence.)

9 **BY MR. ORGAN:**

10 **Q.** If you go to the bottom sentence, this is from October 17
11 of 2015, so jumping ahead a couple of months -- let's see
12 here -- so we had the Timbreza incident and then Romero's
13 e-mail. And then let's go to October 17. There is a reference
14 at the bottom here to -- it says: "I contacted Tom for advice,
15 and he said if you don't have" -- I think he meant access to
16 the surveillance system -- "please contact him."

17 Had you had a conversation with Mr. Diaz about something
18 that had happened in the elevators between him and Ramon
19 Martinez?

20 **A.** Yeah. I believe this was my day off. I believe Mr. Diaz,
21 Owen, called me and said hey, he had a confrontation --
22 confrontation from Ramon, which Ramon covered my days off. We
23 worked five days. Ramon would cover the two days, and then
24 he'd work day shift his other three days.

25 **Q.** Okay.

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1 **A.** So --

2 **Q.** And at that point in time, Mr. Romero was the supervisor
3 for the elevators, and you were off the elevators; is that
4 true?

5 **A.** I don't know if Mr. -- I know Mr. Romero supervised the
6 whole environmental sustainability, that's what he got his role
7 when they told us he was coming at. It was his role. He was
8 supervising the whole environmental sustainability which
9 covered the elevators.

10 I supervised the elevators, the compactor room, all the
11 cardboard going through, all the lines that needed stuff picked
12 up and brought to, that was my role overnight controlling that
13 for them because they worked the day shift. So that was my
14 role. So I believe he was the whole oversight of environmental
15 sustainability under those two.

16 **Q.** There is a reference here to surveillance system. What --
17 did you look at the surveillance system?

18 **A.** Yeah. So they actually gave me access to the surveillance
19 system. Because it was a big warehouse, there was things going
20 on that I couldn't get to every area, but I can actually jump
21 onto the surveillance system. They gave me a token so I could
22 log into their system, and I can look at the surveillance
23 cameras and see what's going on, make sure people weren't
24 messing around, not doing their job.

25 Because like I said, the warehouse is so big, I had a

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1 whole one person covering the whole warehouse. So they gave me
2 access to the surveillance cameras, yes.

3 **Q.** And when you looked at the surveillance for this, you were
4 able to see some interaction?

5 **A.** So when Mr. Diaz called me, I actually looked back because
6 I was at home. I actually logged into my computer and logged
7 into my token and got on and looked at the cameras. All I can
8 see was them face to face, not inside the elevator, but in
9 front of it when the doors opened they were right there.

10 And then the camera just stopped, so I don't know how far
11 Tesla records back or anything like that. I didn't have
12 anything past what I could see.

13 And I told Mr. Owen just put it in e-mail and say what
14 happened, and they will be able to look at the cameras. Like I
15 said, I only had certain access to certain footage back.

16 **Q.** Okay. I see. So some people had access for the whole
17 system?

18 **A.** I don't know if somebody had access to the system. I just
19 know what they gave me access to. It only let me forward back
20 so far. So when he called me and said the time, I forwarded it
21 back and then it stopped. I couldn't go any further back or
22 anything like that. I just seen them face-to-face at the front
23 of the elevator. So I can't tell you what happened. Like I
24 said, I just seen them face-to-face.

25 **Q.** The person who Mr. Diaz had the conflict with, Ramon

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1 Martinez, had you had interactions with Ramon Martinez prior to
2 that?

3 **A.** Yeah, I mean we -- we had to talk to reach other, right,
4 every day we talked to each other and said, "This is where
5 we're at." We interacted and we said, "Hey, we're behind here
6 on this cardboard line. You got to go pick this up first. My
7 shift is over, so have your guys take care of this." And yeah,
8 we had our interactions.

9 **Q.** And did you ever hear Ramon Martinez use the Spanish word
10 "mayate"?

11 **A.** I heard him use "mayate." He also used the Spanish word
12 "chongo" a lot.

13 **Q.** Okay.

14 **A.** Yeah.

15 **Q.** And you understand mayate is the N-word in Spanish?

16 **A.** I don't know it's the N-word. I mean, I am half Puerto
17 Rican, but I speak English. My parents wanted me to speak
18 English. They didn't want us to have any -- any hardship like
19 that.

20 **Q.** When you were walking around the factory, did you ever
21 hear the N-word when you're walking around?

22 **A.** Yeah, I've heard the N-word. I mean, it's casual. I
23 mean, Tesla hired a lot of staffing agency, so they hired a lot
24 of people who can't otherwise get a regular job.

25 So they go through staffing companies, and they went

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1 through a lot of people. So it was just thrown casually. I
2 mean, you don't think nothing of it because it's thrown
3 casually day-to-day now. So it was just --

4 **Q.** So you heard the N-word all over the factory?

5 **A.** Yeah. I mean, as I was moving around, people were on
6 their lines. I mean, people played music on their lines, so
7 they were having fun doing their job. I mean, we were there
8 12 hours a day. They fed us food. Pretty much we didn't have
9 to leave, technically.

10 **Q.** Okay. And did you --

11 **MR. ORGAN:** I think that's it, Your Honor.

12 **THE COURT:** Okay.

13 **MR. ORGAN:** Thank you.

14 Thank you, Mr. Kawasaki.

15 **MR. COLLIER:** I'd like to call Michael Wheeler.

16 **THE COURT:** I think maybe cross-examination might be
17 appropriate.

18 **MR. COLLIER:** Sorry, Your Honor.

19 **THE COURT:** That's okay.

20 **MR. SPIRO:** Thank you, Judge.

21 **CROSS-EXAMINATION**

22 **BY MR. SPIRO:**

23 **Q.** Good morning.

24 **A.** Morning.

25 **Q.** So when you were a lead, as I understand it, you directed

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1 people that worked under you, but you wouldn't direct people
2 that worked in other units or divisions; is that fair?

3 **A.** That is fair, yeah. I only directed people that were
4 underneath my position. So when I was a lead of the elevator,
5 I directed the two people, three or four people that were under
6 me at the elevator. And when I became the overnight lead, I
7 directed everybody that was worked for environmental
8 sustainability overnight.

9 I didn't direct anybody on the lines. I didn't direct
10 anybody that actually worked for Tesla, period. It was just
11 the leads of who I controlled which was environmental
12 sustainability, bringing cardboard and material up and down.

13 **Q.** And I know eight years is a long time ago. Do you recall
14 that when you became a lead you signed some documents?

15 **A.** I'm almost guaranteed we signed documents with Tesla when
16 I became a lead. I can't recollect what documents I signed. I
17 mean...

18 **Q.** Understood.

19 And you had several people who worked for you when you
20 were a lead in the elevators?

21 **A.** So when I became the elevator [sic], I believe I had about
22 four or five people that worked for me underneath the elevator
23 because we had two different elevators; two people covering
24 elevators, two people that were in the elevators because when
25 somebody needed to use the bathroom, somebody had to operate

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1 the elevator; it had to keep going.

2 Q. And sometimes there would be two people working together
3 in the elevators; is that fair?

4 A. Most of the time there was two people working together
5 because some person would run the elevator. People would come
6 out, bring the material in the elevator and vice versa. They
7 would hand each other and they would cover each other's breaks
8 and lunches.

9 Q. While working at Tesla, you know, you also saw some
10 graffiti?

11 A. Yeah. There was -- I mean, you have a place of people.
12 People do stupid things. So they draw on things. Tesla tried
13 to scratch them off, but it's graffiti on plastic. Hard
14 markers, it doesn't really come off too easily.

15 Q. Right. But there would be graffiti -- and you've seen
16 graffiti and bad words in other jobs you've had; fair?

17 A. Yeah. I'm in construction. I mean, we see it very often.
18 Like I said, there's people that do stupid things out there.

19 Q. And when Tesla would find out about this, if somebody
20 reported it, they took care of it. They didn't have control
21 over somebody doing it, but if they reported it, then they
22 would try to take care of it and remove it?

23 A. For the most part, what I've seen, they try to scratch it
24 off the stuff when it happened. I mean, you have -- the
25 factory is over, what, a hundred thousand people daily. I

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1 mean, yeah.

2 Q. Understood.

3 So I want to move past graffiti.

4 You were Mr. Diaz's supervisor?

5 A. Yes.

6 Q. And he worked for you?

7 A. Yes.

8 Q. He was one of your people?

9 A. Yes.

10 Q. And he got promoted under you?

11 A. Yes.

12 Q. He got a raise under you?

13 A. Yes.

14 Q. You had a good relationship with him?

15 A. Yes.

16 Q. And as far as you know, he never complained about you to
17 you or to anybody else?

18 A. Say that again.

19 Q. As far as you know, he never complained about you, either
20 to you or to anybody else?

21 A. If he complained about me, it didn't really matter; I was
22 his supervisor. If he complained, I mean, he complained. If
23 he said it to the higher-ups, they never told me about it. So
24 nonetheless, yeah.

25 Q. And you made yourself available to him and the other

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1 people that worked for you by phone, by e-mail. You were
2 available to them?

3 **A.** I was available by e-mail or by phone. If they called me
4 even on my day off, if they called me, something was happening,
5 if I could help them with the situation, I would help. I mean,
6 I was their supervisor, right, so.

7 **Q.** You were at Tesla for about six, seven months after
8 Mr. Diaz got there?

9 **A.** I can't recollect. Like I said, six or seven months. I
10 don't know when he actually got "hired" hired. I can
11 recollect -- I mean, I can't recollect the timeframe he got
12 hired, right. I mean, it's over eight years ago. You are
13 telling me to remember dates that somebody got hired?

14 **Q.** Well, you were there through October 2017 --

15 **A.** Yes. Yes. So --

16 **Q.** You were there into November 2017?

17 **A.** I believe partially. I was actually -- so in November --
18 so I was actually doing work in Tesla overnight, and then I was
19 doing my union during the day. So if something burns out -- I
20 joined Local 38 Plumbers Union here in San Francisco, and the
21 plumbers union, obviously, is a better job than working for
22 Tesla.

23 **Q.** And I can show you some work records. But fair to say,
24 basically, you phased out of Tesla at the end of that year,
25 2017?

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1 **A.** If you can show me recollections of when -- I don't know
2 the exact date I left. Like I said, I was pretty burnt out at
3 working two -- like I said, I just moved back from Texas. I
4 had my wife, and we were here, and I had to pick up a job, so I
5 picked up Tesla.

6 And then Local 38 actually took me two years to get into
7 that because I took the test, and two years later they actually
8 called me. And I worked both shifts, and then I burned out and
9 said, "Actually, I'm going to go and do my plumbing thing."

10 **MR. SPIRO:** If we can just show the witness his
11 deposition testimony 13:24 to 14:2, to refresh his
12 recollection, and while that's being pulled up --

13 **THE COURT:** Why don't I just provide him -- do you
14 have a copy?

15 **MR. SPIRO:** There is a copy in front of him, but I put
16 it on the screen for you because it's an easy one.

17 **BY MR. SPIRO:**

18 **Q.** So does that refresh your recollection that you were there
19 roughly six months after --

20 **A.** Yeah. So it was roughly six to seven months. I mean,
21 yeah. I don't know when this depo -- probably earlier. The
22 depo was obviously taken earlier than now; right? So --

23 **Q.** Right.

24 **A.** -- it was probably six or seven months. I got burnt out
25 of doing both jobs.

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1 Q. Okay. So from June until the end of the year 2015.

2 So -- and fair to say, as I think you just said, that your
3 recollection of the events eight years ago was fresher at your
4 deposition than it would be, of course, eight years later
5 today?

6 A. Yeah.

7 Q. Now, when you were working, you had people under you who
8 had all sorts of issues that they would come to you on because
9 people at Tesla would have interpersonal difficulties with
10 other people; fair?

11 A. Yeah. I mean, you don't get along with -- I was told, if
12 you don't get along with your coworkers all the time, but you
13 have to make do because you're working for a job; right? You
14 can't -- you don't get along with everybody that you work. I'm
15 pretty sure you don't get along with all your co-workers, you
16 know, so...

17 Q. And some people would complain about other people for a
18 variety of reasons; right?

19 A. More than likely, yes, they complain about variety of
20 reasons, but if it was something that, hey, you can't -- if he
21 is listening to his music or he's dancing or if he's singing
22 his music out loud, as long as he's doing his job, what --

23 Q. And you notice some people would tell on other people to
24 try to get them in trouble because there were these sort of
25 bickerings going on, but --

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1 **A.** That's every day. That's every day. Every day situation.

2 **Q.** When you showed up to investigations or when you showed up
3 to talk to people, I think you've already said a couple of
4 times that you'd show up and say, "What happened? I don't know
5 what happened." You'd say, "What happened?" Right?

6 **A.** Pretty much, yeah. I'm not there, so I'm pulling up to
7 the situation. Like I said, I ran the whole warehouse for
8 environmental sustainability. If something happened on the
9 south side and I'm on the west, what happened? I can't
10 recollect what happened, so people around, obviously,
11 "googling," seeing, oh, they're about to get into a fight.
12 People torn together. I don't -- yeah.

13 **Q.** Right. You wouldn't show up and say, "I know what
14 happened," and ask leading questions.

15 **A.** No.

16 **Q.** You'd just show up and say, "What happened?"

17 **A.** No. "What happened? What's going on? How did it happen?
18 Did you guys see how it started? What's the situation?"

19 And then I talked to both parties in the situation. Get
20 their both sides and determine what other people had said
21 happened and go from there.

22 **Q.** Because you wanted to be fair?

23 **A.** Yeah.

24 **Q.** Okay. So you show up at the Timbreza incident, and before
25 that, Mr. Diaz had not told you that he had been called any

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1 racial slur by Timbreza when you showed up there. You showed
2 up there mid-incident?

3 **A.** No. I showed up there after he gave me a call. Owen --

4 **THE COURT:** Hang on just a second.

5 **MR. ORGAN:** There were three questions in there,
6 Your Honor.

7 **THE COURT:** Okay. Overruled. You can answer to the
8 extent that you recall the -- what you were --

9 **THE WITNESS:** Can you repeat now?

10 **MR. SPIRO:** Yeah. And I think because we're probably
11 both talking too fast, but let's -- I'm going to try to go
12 question/answer, question/answer.

13 **BY MR. SPIRO:**

14 **Q.** So before you showed up at the Timbreza incident, Mr. Diaz
15 had not reported to you previously that Timbreza had issued
16 racial slurs towards him?

17 **A.** No.

18 **Q.** Okay. So you get the call and you show up immediately,
19 and they are in the heat of the moment?

20 **A.** I show up within 5 minutes. Like I said, I was on the
21 other side of the warehouse. I had to walk to where they're at
22 and figure out what's going on. So I showed up probably, like,
23 I can give you, roughly, 5 minutes. Wouldn't say right after
24 he gave me the call.

25 **Q.** And when you show up in the heat of the moment, you, sir,

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1 did not hear a racial slur being thrown?

2 **A.** No.

3 **Q.** Okay. And when you got there, you can't really remember
4 exactly what the argument was about. Just that Mr. Diaz said
5 Timbreza called him something?

6 **A.** It wasn't Mr. Diaz. It was everybody around that said
7 he's throwing racial slurs at him and they were about to fight.

8 So when I pulled up, they were face to face and they were
9 heated in the argument. Nothing -- I didn't hear any racial
10 slurs, but when I talked to people after I separated them,
11 talked to people, they said, yes, he was throwing racial slurs
12 at Mr. Diaz.

13 So like I said, I took the initiative and said, "Timbreza,
14 you need to go home for the night. I will contact you when you
15 can come back."

16 And that's when I sent the e-mails out and talked to the
17 higher-ups, and they made their decision on what was going to
18 happen.

19 **Q.** And when you were first asked about this under oath, you
20 said, "I think they -- I think something. I forget what he
21 said. He said something" --

22 **MR. ORGAN:** Objection, Your Honor.

23 **BY MR. SPIRO:**

24 **Q.** -- "that he called him something. I just forget what it
25 was, but I had it all in an e-mail."

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1 **THE COURT:** And the objection is?

2 **MR. ORGAN:** He's reading testimony in. If he wants to
3 refresh his recollection, he can show him the deposition. If
4 he wants to read it, he has to tell us the line and page
5 number.

6 **MR. SPIRO:** That's -- I can ask him directly, "Didn't
7 you previously recall? Did you previously testify to this?"

8 **THE COURT:** You can ask that question.

9 And you can answer, and if you don't know, then we'll go
10 through the transcript and see what -- what the story is.

11 **BY MR. SPIRO:**

12 **Q.** Isn't it a fact, sir, that when you first testified in
13 this case in your deposition, when your memory you already said
14 was fresher, that you said, "I can't really remember what the
15 argument was about, but I think they -- I think something -- I
16 forget what he said. He said something. He -- that he called
17 him something. I just forget what it was, but I have it all
18 down in an e-mail."

19 Didn't you say that?

20 **A.** So if you can recollect where I'm at in the deposition,
21 more than likely I said that. I can't recall. When you guys
22 had my deposition, it was probably, what, four or five years
23 later I had my deposition? So I said I wrote everything in
24 e-mail form --

25 **THE COURT:** So let's --

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1 **THE WITNESS:** -- so it's there. If you can recollect
2 my memory, I did not have access to Tesla.

3 **THE COURT:** You're doing fine. Let's now --

4 **MR. SPIRO:** I'm just going to play it.

5 **THE COURT:** No. You're not going to just play it.

6 **MR. SPIRO:** Okay. Okay. I'll show it to him.

7 **THE COURT:** You're going to show it to him. He's
8 going to have a chance to look at it. I don't allow what you
9 did the first time with respect to refreshing recollection,
10 putting stuff on a screen until the witness has had a chance to
11 look at it. That may happen in some courts. Does not happen
12 here.

13 **MR. SPIRO:** Understood, Your Honor. So let's give --

14 **THE COURT:** I thought you said that he has his
15 deposition.

16 **THE WITNESS:** I only have these two binders.

17 **THE COURT:** Okay. Here.

18 Where do you want him to look?

19 **MR. SPIRO:** 36:20.

20 **THE WITNESS:** 36:20. What page number is that?

21 **THE COURT:** In the deposition?

22 **MR. SPIRO:** Yes. In the deposition.

23 **THE WITNESS:** Where do I find 36:20? I have page
24 numbers, page 13.

25 **THE COURT:** Look at the bottom of the page. They have

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1 the --

2 **MR. SPIRO:** It's on page 36.

3 **THE WITNESS:** Oh, page 36. Okay. Thank you.

4 **MR. SPIRO:** Line 20.

5 (Pause in proceedings.)

6 **THE WITNESS:** Okay 36:20.

7 **BY MR. SPIRO:**

8 **Q.** Okay. And I'm asking if -- what the Court is asking me to
9 ask is: Does this refresh your recollection that you said that
10 you forget the word that was actually said, but you have it all
11 down in an e-mail?

12 **A.** So it's --

13 **MR. ORGAN:** Your Honor --

14 **THE COURT:** Just take -- take a moment. Read what you
15 testified to, and then you can respond to the question.

16 **MR. ORGAN:** And for completeness, Your Honor, he
17 should continue to read through page 41 -- or actually through
18 43, line 5, because --

19 **THE COURT:** Mr. -- first of all, please don't make
20 long speaking objections, Mr. Organ.

21 **MR. ORGAN:** Yes, Your Honor.

22 **THE COURT:** Second of all, you are more than welcome
23 to redirect when that comes up.

24 **MR. ORGAN:** Okay.

25 **THE COURT:** There's a specific question on the table.

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1 **THE WITNESS:** Yeah. Like it says here, I vaguely
2 remember they had an altercation. Like I said, this was over
3 five years ago. I was in a new job. I wasn't really worried
4 about this because I wasn't there anymore; right?

5 So this has nothing -- so I said: "I vaguely remember the
6 argument. I believe I was doing my route, which I was on the
7 other side of a warehouse doing my route, and making sure
8 everybody was okay. They didn't need any help. Like, I, you
9 know, drove around.

10 **BY MR. SPIRO:**

11 **Q.** I'm asking a specific question, sir.

12 **A.** So yeah. And I answered the question the best I could.

13 **THE COURT:** Okay. So one of the things about this is
14 you're not having a conversation with Mr. Spiro. It is a
15 question and answer.

16 **THE WITNESS:** Okay.

17 **THE COURT:** So when he -- when you finish something,
18 he'll ask you something, and then you got to wait until he's
19 finished so you know exactly what he's asking.

20 **THE WITNESS:** All right.

21 **THE COURT:** Then you go.

22 **THE WITNESS:** Sorry.

23 **BY MR. SPIRO:**

24 **Q.** Yeah. This is just an easy simple thing. You put down --
25 you said that you wrote what you knew to your immediate

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1 supervisor; right? And you just didn't remember exactly what
2 the word was; right?

3 **A.** I didn't -- when I had my deposition, I said I don't
4 vaguely remember, but I know I did it in e-mail form of what it
5 was. Like I said, this was five years ago from when I had my
6 deposition of this matter. I had a phone call, an e-mail from
7 both parties saying: "Hey, this is what's going on. Can you
8 come in and recollect your memory?"

9 **Q.** Again, sir, it's just a very easy thing which is just at
10 the deposition you just didn't remember what word you heard at
11 the scene?

12 **A.** I said I vaguely remember what was going on. Like I said,
13 it was five years ago. Simple question.

14 **Q.** Okay. But we have a contemporaneous written record of
15 what happened, that e-mail; right?

16 **A.** I don't understand. I don't -- that's too big of a word
17 for me. "Contemporaneous" is too big of a word for me. I'm a
18 plumber.

19 **Q.** We have a written record of, as you said in your statement
20 in the deposition, you put everything down in an e-mail, and we
21 have that e-mail. You were just shown it; right?

22 **A.** Yes. I put -- correct.

23 **Q.** Okay. And there wasn't a recording of what happened at
24 the scene; correct? That you know of.

25 **A.** What do you mean? A recording of -- audio recording?

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1 Q. Yes.

2 A. No. I don't -- no. I don't -- I didn't have access then.
3 I didn't know that there was audio on the cameras.

4 Q. And it was important for you to have everything documented
5 which is why you sent that e-mail?

6 A. Yes. So I need --

7 Q. I'm just -- most of these questions --

8 A. Asked the question. I was going to answer it, so...

9 Q. Well, most of these questions, and I'm just -- just to
10 move it along, I appreciate your being forthright -- but are
11 just going to be yes or no. Some of them are at least going to
12 be yes or no.

13 And you also sent that e-mail because you were directed by
14 your supervisors to send an e-mail and copy Ed Romero when
15 there was an incident; correct?

16 A. Yes.

17 Q. And Ed Romero told you, "Make sure you communicate with us
18 early in a short e-mail of any situation."

19 A. Say that again?

20 Q. Mr. Romero told you, in substance, to make sure you
21 communicate with us early in a short e-mail of any situation.
22 They wanted you to e-mail them?

23 A. In any situation, that was a proper protocol. If you had
24 a situation, you e-mailed it out to the supervisor, let them
25 know what was going on. Because like I said, I was the only

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1 person for environmental sustainability overnight, so that's
2 why they gave me access to the cameras, that's why they gave me
3 a token, that's why I have a Tesla e-mail.

4 **Q.** Okay. And Mr. Romero at -- when he started, it was
5 important to e-mail him also, because as you already testified,
6 he worked a different shift.

7 So to get in touch with him, you'd e-mail him?

8 **A.** To answer your question, it is not a yes or no. When he
9 first started, right, Victor and Jaime Salazar said Ed Romero
10 was going to take over the environmental sustainability
11 department for both overnight and day shift, right, so you need
12 to CC him on every e-mail and e-mail him first and CC us on it
13 so we're aware of what's going on.

14 He was actually working for nextSource staffing. He
15 wasn't actually a Tesla employee, but that's who they said was
16 our next chain in command when he came on. He came on after I
17 was already employed there and in the position.

18 **Q.** Yes. The only question I have is Mr. Romero, when he then
19 started, actually instituted a new policy that he wanted daily
20 reports so that he would know of anything unusual that happened
21 on a shift; correct?

22 **A.** If you can recollect my memory, I'm pretty sure he did ask
23 for daily reports about what was going on, where you guys were
24 at so nothing got left behind. Because like I said, if you --
25 this line has five piles of cardboard behind them, they can't

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1 bring material in. We had -- the environmental sustainability
2 was a moving chain. If you broke a link in that chain, it did
3 not work.

4 **Q.** Understood.

5 So what you were left with from those conversations with
6 Mr. Romero and Mr. Quintero was all that you knew was if there
7 was any issue on your shift, you should e-mail it and CC these
8 people on it; fair?

9 **A.** Correct, fair.

10 **MR. ORGAN:** Objection. Objection. Beyond the scope.

11 **THE COURT:** Overruled.

12 You can answer. And you did, so go ahead.

13 **BY MR. SPIRO:**

14 **Q.** And, sir, you directed Owen Diaz to do the same?

15 **A.** Correct. When he was on the elevator shift, I directed
16 him. If something happened on his shift, e-mail me, e-mail CC
17 those two as well, and that -- correct.

18 **Q.** And you would e-mail Mr. Romero daily reports, and he
19 would say, "Good. Good report"; right?

20 **A.** He'd probably respond. Honestly, the daily reports were
21 nothing that I looked back on for e-mails. It's just a daily
22 report of what -- how everything went, how smooth the
23 transaction went overnight.

24 **Q.** And sometimes Mr. Diaz would send you complaints about
25 things like people leaving full gondolas outside of the

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1 elevators or other issues. He would e-mail you?

2 **A.** I'm pretty sure he would. I don't have access to those
3 e-mails. You've got to recollect my memory of what's going on.
4 I don't have my e-mail chain in front of me, sir. So if he did
5 e-mail me back, I wouldn't remember.

6 **Q.** And when you got -- okay. When you e-mailed these things
7 to your supervisors or directed Owen to do the same, it's
8 important in these documents to be as accurate as possible;
9 fair?

10 **A.** So -- yeah, fair. Accurate as possible. So like I said,
11 I didn't feel comfortable putting the N-bomb in the e-mail. I
12 put "racial in nature," if that's what you're trying to get at
13 in as accurate as possible.

14 **Q.** Well, you seem to be anticipating that. Is that a topic
15 that you discussed with Mr. Diaz's lawyers?

16 **A.** Well, I mean, you're leading to it. I can see where
17 you're going. I'm not a dumb person. I can see you leading to
18 that question.

19 **Q.** What we're going to do, if it's okay is -- I understand --

20 **A.** I'm sorry. I'm not used to this, so I'm answering the
21 best that I could in what you're asking.

22 **THE COURT:** Just -- Mr. Spiro will ask you a question.
23 You just respond to the question itself. And if there are
24 other things that need to be brought out that Mr. Organ thinks
25 is important to the case, he will do that too.

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1 **BY MR. SPIRO:**

2 **Q.** Were you prepared prior to your testimony to answer
3 questions about why you put the phrase "racist in nature" in
4 that e-mail?

5 **A.** Prepared? You mean know? Like I said, that's just me
6 personally in the e-mail. I don't put the N-bomb in there. I
7 don't -- "racial in nature" was the circumference for me. It
8 was just circumference, the whole situation of what happened
9 for me.

10 **Q.** Sir, that's not my question.

11 **A.** Okay.

12 **Q.** My question is simply did Mr. Diaz's lawyers discuss with
13 you the fact that you used the phrase "racist in nature" in
14 that e-mail?

15 **A.** So I got discussed that when I first had this whole
16 deposition, why did you put "racial in nature" in the
17 situation. When I got called back here again -- why am I
18 coming back for this same situation again? I was already here
19 for this same situation. Why am I coming back again?

20 **Q.** Also not my question. It's a very simple question, which
21 is: Did you discuss why you put the phrase "racial in
22 nature" --

23 **A.** I answered the question. I said, yes, I had conversations
24 with them before.

25 **Q.** That's just -- okay.

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1 **A.** I answered that question, I believe, so...

2 **Q.** I didn't catch it. And, again, just so we are clear, sir,
3 whether -- whatever word was said, if it was racial in nature,
4 can we agree it was wrong?

5 **A.** Yes. That's why I put "racial in nature."

6 **Q.** Okay. But I still have to ask questions a little bit
7 about that night. Okay?

8 **A.** Okay.

9 **Q.** So the other reason to be accurate in an e-mail is because
10 memories fade; true?

11 **A.** True.

12 **Q.** And another reason to be accurate in e-mails when people
13 are working in different shifts is because things can get lost
14 in translation; true?

15 **A.** Correct. I said correct.

16 **Q.** And the other thing that can happen is someone can say
17 something in one language, and it can get repeated; true?

18 **A.** Sure.

19 **Q.** And you did send an e-mail about the incident, and then
20 for you, it was out your hands; fair?

21 **A.** For me, I sent the e-mail -- fair. Sorry. Yes.

22 **Q.** And that's it. Whatever they did from there and took it
23 from there, that was out of your hands; fair?

24 **A.** Out of my control. Whatever they chose to do with
25 Mr. Timbreza, whether it be writing him up, I had no control.

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1 I just -- whatever they gave me to have him sign, I gave to him
2 to have him sign. It was out of my control.

3 Q. So once you relayed whatever happened up the chain, and it
4 was out of your hands and you were passing it off to them,
5 there is nothing particularly unusual about you not being on
6 every e-mail that happened the rest of the night, is there?

7 A. I don't know why I wasn't on every e-mail. Like I said,
8 if he chose to CC me on the e-mail for whatever reason, I had
9 no control over that. I CC'd all of them on my e-mails. My
10 correspondence they had were CC'd on all of them.

11 Q. Right. But you are not CC'd on every supervisory chain
12 that goes on, obviously; right?

13 A. I mean, like I said, the e-mail that got brought up
14 between Victor and Ed was nothing that I was aware of. I
15 didn't know what was going on. Like I said, Mr. Romero came to
16 me with nextSource paperwork saying, "This is what we're going
17 to do. We're going to write Mr. Timbreza up." I said, "Okay."

18 Q. Right. But again, you are the one who said to them, "This
19 is now out of my hands." You are not on the e-mail. Is there
20 anything unusual about that to you?

21 A. No. Because like I said, they are the higher-ups.
22 Whatever they choose to do, they delegate to me to pass on to
23 them. Like if they said, "Write him up" or they said, "He is
24 being laid off," what am I going to say, "You can't lay him
25 off." That's not my position. I'm not that high up in the

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1 chain, right, so --

2 Q. So now that we have been through the mystery of not being
3 on an e-mail, I want to talk to you about the things that
4 you've talked about because you said, I think earlier in front
5 of the jury, that you thought you knew where I was going or
6 words to that effect?

7 A. Yes.

8 Q. Okay. So we talked about how you didn't hear when you got
9 to the scene. We talked about when you were first asked under
10 oath, you didn't remember the word. We've talked about the
11 e-mail itself and the phrase that you're using, "in nature."
12 Right?

13 And can we agree that something in nature or in context
14 means that the way it's normally used is that if you use a word
15 in one context, it could be not racially offensive, and in
16 another context, it could be racially offensive? For example,
17 the word -- and I hate to say this, but in this kind of case I
18 have to -- a word like "monkey" can be benign in one
19 circumstance and in nature, in context could be a very bad
20 word. Is that fair that --

21 A. That is fair, yes. You can use that same word in
22 different context, right. But if you are using that word and
23 you are angry or you are looking at the person and obviously
24 whatever you want to call it in a different thing, that's where
25 it comes.

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1 **Q.** I agree with you completely. But the reality is when this
2 document, this e-mail was first put in front of you under oath,
3 you said that you honestly could not remember the exact word
4 that was said; isn't that true?

5 **A.** That is true. And I asked you to recollect my memory of
6 my e-mail.

7 **Q.** Exactly.

8 **A.** Which I had no chain to; right?

9 **Q.** Exactly. So just -- and you did ask. After you said you
10 honestly don't remember the word, you asked to see the e-mail.

11 Okay.

12 (Pause in proceedings.)

13 **MR. SPIRO:** My handwriting is not that good.

14 **BY MR. SPIRO:**

15 **Q.** And when you spoke to the eyewitnesses, okay, you don't
16 remember any of them telling you that the N-word was used;
17 true?

18 **A.** I don't remember that when I spoke with the eyewitnesses
19 that racial -- they were saying racial slurs were being thrown
20 at him. They were arguing. So like I said, I made that
21 decision to separate them and send him home, and I put it in
22 e-mail form that racial slurs were thrown in nature.

23 **Q.** Understood.

24 Not exactly my question. And I think you did the right
25 thing. But my question is simply this: The eyewitnesses who

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1 were there when you first showed up on scene, none of them told
2 you that the N-word was said; correct?

3 **A.** I can't recollect that.

4 **Q.** Okay. Can I show you again your deposition, 43, line 3?

5 **A.** Forty-three, line --

6 **Q.** 3.

7 **A.** 3. That was the question.

8 **Q.** Yes. So if you can just look about ten lines, does that
9 refresh your recollection that you did not have anybody else
10 saying the N-word was directed at him?

11 (Pause in proceedings.)

12 **THE WITNESS:** Correct.

13 **BY MR. SPIRO:**

14 **Q.** Okay. No eyewitness says it.

15 And importantly, until that incident you had never heard a
16 racial slur used in an aggressive manner at the Tesla factory?

17 **A.** No, not in an aggressive --

18 **MR. ORGAN:** Objection. Relevance.

19 **THE COURT:** Overruled.

20 **MR. SPIRO:** Okay.

21 **THE WITNESS:** Okay?

22 **THE COURT:** Yep.

23 **THE WITNESS:** No. But it was thrown around casually
24 when people were just talking to each other. They were
25 throwing around the N-bomb. I didn't think anything of it.

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1 You asked me a question, so I'm answering, sir.

2 **BY MR. SPIRO:**

3 **Q.** I know you are trying to do your best. My question was
4 just simply the question I asked which was I think you said the
5 answer which was no, you had never heard a racial slur used in
6 an aggressive way at the Tesla factory; true?

7 **A.** No. Or true, yes.

8 **Q.** Okay. And we had talked about earlier how you had never
9 heard Owen Diaz say anything -- so never -- by anybody, and
10 Diaz himself had never complained about Timbreza you said
11 earlier. Okay. So --

12 **THE COURT:** So is there a question?

13 **THE WITNESS:** Yeah.

14 **MR. SPIRO:** Yeah. It's coming. Sorry, Your Honor.

15 **MR. ORGAN:** I would move to strike, Your Honor.

16 **THE COURT:** Well, I'm waiting for the question.

17 Just -- just ask questions as opposed to testifying yourself.
18 That'd be helpful.

19 **BY MR. SPIRO:**

20 **Q.** Well, did you testify earlier in front of the jury that
21 this was the first time Diaz had ever mentioned that Timbreza
22 used a racial slur against him?

23 **A.** To me, yeah. The situation was that's what happened in
24 the situation. That's like -- that's why I e-mailed the
25 situation that night, that racial slurs were thrown, in nature.

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1 Like I said, you're recollecting my memory of the
2 conversations I had with them. That's just what happened with
3 me that night, and that's why I sent Judy Timbreza home that
4 night.

5 **Q.** And even in your deposition, when you were asked in a
6 leading question: "Don't you remember Mr. Diaz telling you
7 about the N-word?"

8 You still at that point in time said: "Honestly, I don't
9 remember."

10 Isn't that true, sir?

11 **A.** Yeah. Honestly, I don't --

12 **MR. ORGAN:** Objection. Misstates his testimony.

13 **THE COURT:** Overruled. You can redirect.

14 **BY MR. SPIRO:**

15 **Q.** The answer stands, and I'll move on.

16 So here we are eight years later, as we talked about, and
17 I think you mentioned that there came a point in time when you
18 began speaking with Plaintiff's counsel; correct?

19 **A.** I spoke with Tesla's counsel when I first had this, and I
20 spoke with Plaintiff's counsel the same. You both, like I
21 said, you both e-mailed me and asked me to speak my side, and I
22 spoke with both counsels. And yes, both during the situation.

23 **Q.** First of all, you and I have never met before; correct?

24 **A.** There was a different counsel. I had another lady.

25 **THE COURT:** Mr. Spiro, that's -- you're just into the

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1 case, so let's use better analogies.

2 **BY MR. SPIRO:**

3 **Q.** Well, how about this: Plaintiff's counsel met with you
4 and spoke to you in the last few weeks about your testimony;
5 true?

6 **A.** Corrective. I had conversations with them, yes.

7 **Q.** And meetings?

8 **A.** Meetings, yes.

9 **Q.** Okay. In their offices?

10 **A.** I had meetings in -- on a Zoom meeting.

11 **Q.** But not in their offices?

12 **A.** Yes.

13 **Q.** Okay. So you had several meetings?

14 **A.** Yes. You guys had not reached out to me. Like in the
15 first case when you both reached out to me, I talked to both
16 parties. They reached out to me in this situation. I got
17 subpoenaed for this situation. I missed work yesterday for
18 this situation. I'm missing work right now for this situation.

19 So if you would've did your due diligence and contacted
20 me, I would have responded to you as well.

21 **Q.** I'm not faulting you. I'm just asking. Just -- these are
22 simple questions.

23 **A.** And I answered your question "yes." I met with them
24 because they contacted me.

25 **Q.** Okay. And one of the things that you discussed in the

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1 meeting was the e-mail that you have discussed in trying to
2 explain why you wrote the phrase "racist in nature." That was
3 discussed?

4 **A.** They brought up exhibits as well, yes. They brought up
5 the same exhibits.

6 **Q.** Okay. And as you sit here now, eight years later, you
7 don't actually remember yourself and can picture yourself
8 writing that e-mail; right?

9 **A.** Picture myself writing the e-mail? I know I wrote the
10 e-mail because, like I said, it's in the text chain. You guys
11 are taking things vaguely. The e-mail chain is there. If it
12 was all written down, you will see a correspondence between all
13 parties.

14 **Q.** That wasn't exactly my question. The question was just
15 simply this, sir: You don't as you sit here today have a
16 present memory of actually writing the e-mail? We both agree
17 the e-mail exists.

18 **A.** Do you have a present memory of you writing an e-mail
19 eight years ago? Sorry.

20 **THE COURT:** So --

21 **THE WITNESS:** I get offensive because the e-mail is
22 there. It's written down. I wrote it to the best of my
23 knowledge at that time. You're trying to get me to recollect a
24 memory from eight years ago.

25 **THE COURT:** But that is really the question of

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1 Mr. Spiro.

2 **THE WITNESS:** Okay. So no. I don't recollect writing
3 the e-mail eight years ago. I know it's there because we have
4 proof of it.

5 **BY MR. SPIRO:**

6 **Q.** And we agree that it's there. Okay? Again, sir, nobody
7 is saying that you did anything wrong in the e-mail. I just
8 have to ask you questions about it. Okay?

9 So the reality is --

10 (Pause in proceedings.)

11 **BY MR. SPIRO:**

12 **Q.** When you were writing those e-mails, can we agree
13 sort of as a matter of course that there are at least
14 two possibilities? One is that you wrote "racist in nature"
15 because you didn't have a clear, crisp view in your mind of the
16 word that was used. That's one possibility.

17 If I can just finish the question --

18 And another possibility would be that you didn't want to
19 use certain language in an e-mail?

20 **A.** Correct. That is exactly what it is. I don't use the
21 words that are thrown around. I have -- my wife is Black. My
22 kids are Black. I wouldn't want them to be -- that word thrown
23 to them. I put "racial in nature" to circumference the whole
24 thing. Like I keep saying, it circumferences the whole nature.
25 It's still racist in nature. It's still racist. It happened.

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1 Q. We agree it's racist. We agree it happened. The question
2 is: You didn't in that e-mail write N-bomb, like you said
3 today.

4 A. I don't -- I don't throw that word casually. I don't
5 write it. That was the most professional way I could feel to
6 write that situation up in the e-mail. As a professional
7 e-mail. Like I said, I was new to a supervisor. It was the
8 best way I typed up a professional e-mail without throwing that
9 word in there.

10 Q. When you met with Mr. Romero, you don't remember
11 eight years later that specific conversation, either; right?

12 A. So -- and when you guys recollect my memory with the
13 e-mails, I remember we met in the cafeteria on the second
14 floor. That's what I recollect. Remember meeting Mr. Romero
15 in the morning in the cafeteria.

16 Like I said, I worked the overnight shift. They worked
17 the day shift. We overlapped. He met me in the morning before
18 I had to leave for my shift.

19 Q. Right. My question is: You don't have a clear memory of
20 the conversation that you had with Mr. Romero eight years
21 later, who said what and what you said back exactly, do you?

22 A. No, no.

23 Q. Okay. Did anybody ever tell you that Mr. Timbreza was
24 speaking in Spanish?

25 A. No.

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1 Q. No one ever told you that?

2 A. Speaking in Spanish? No. I don't believe Mr. Timbreza
3 was Spanish. I believe he was maybe Filipino, maybe, after
4 having a conversation with him.

5 Q. But nobody ever told you that he was using Spanish
6 language and racial slurs that were Spanish?

7 A. No. Not to my recollection.

8 Q. Okay. And when you first were asked about what you told
9 Mr. Romero in that meeting, you told him what other people had
10 told you, what the witnesses had told you about the events;
11 correct?

12 A. They were saying -- yes. They were -- I vaguely remember,
13 like, when you brought up the e-mails, it brings back a memory.
14 It clings in my head that I said, "Okay. This is what happened
15 in that situation with Mr. Timbreza and Owen."

16 Q. Right. And Mr. Romero left that meeting with an
17 understanding that something racial had happened?

18 A. Yes -- yes, sir.

19 Q. Okay. We can agree.

20 A. It's in the e-mail, and he responded to it as well.

21 Q. Right. And that's why when you were asked even now on
22 direct examination by Mr. Diaz's lawyers at line -- at 16:25 to
23 17:4. "Okay. So when you talked to Mr. Romero, did you
24 mention to Mr. Romero that Owen Diaz had been called the
25 N-word?"

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1 You responded: "Yes. I told him that racial slurs were
2 thrown as I talked to people around." Right?

3 **A.** I didn't say the N-bomb. I said racial slurs were thrown
4 towards him, so I didn't confirm that the N-bomb was thrown. I
5 never said that. I said racial slurs were thrown at him.

6 **Q.** Exactly. And you -- Ed Romero told you that Timbreza
7 would be written up for this; correct?

8 **A.** They made their decision like you see it in the e-mail. I
9 wasn't CC'd to the decision e-mail. I just know that I got
10 paperwork brought to me.

11 **MR. SPIRO:** I object.

12 **THE COURT:** Overruled. You can continue.

13 **BY MR. SPIRO:**

14 **Q.** Okay. You got paperwork brought to you. We'll skip
15 ahead. And it said that he was being written up for a slur of
16 a racial nature; true?

17 **A.** I don't know. I don't have the paperwork. I can't
18 recollect what was written on the nextSource paperwork. All I
19 know is I had Mr. Timbreza sign it for a verbal write-up for
20 his first verbal write-up.

21 **Q.** Okay. Well, do you remember previously giving testimony
22 in this case?

23 **A.** Saying "previously giving testimony," you can recollect my
24 memory.

25 **Q.** Sure. Well, can you turn to the other document in front

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1 of you?

2 **A.** This is the other binder?

3 **Q.** The trial transcript.

4 **A.** Yep.

5 **Q.** And in the prior proceeding, if you could go to page 125.

6 **A.** 125. The end of the book. Yep.

7 **Q.** Line 9. And just read a few lines. And does this refresh
8 your recollection that the written write-up that Mr. Timbreza
9 got indicated that he was being written up for something racial
10 in nature?

11 **A.** At this point I think I recollect that it did and it
12 should have, but at this point, like I said, I don't have the
13 paperwork in front of me. I don't -- so if that was brought up
14 and you have the paperwork, I'd be more than happy to look at
15 it.

16 **Q.** You're not taking back what you said in your sworn
17 testimony, are you?

18 **A.** I'm not taking back what I said, no.

19 **Q.** Okay.

20 **A.** I'm not taking that back. Like I said, at this point
21 right now, I don't remember what was put on it. That was --
22 this testimony was, what, over four years ago?

23 **Q.** Okay. By the way, Timbreza worked for a staffing company.
24 He didn't work for Tesla?

25 **A.** Correct, correct. We all worked for a staffing company in

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1 our department besides the higher-ups, worked for Tesla. Ed
2 Romero also worked for a staffing company, nextSource, and
3 I believe he got put on to Tesla.

4 **Q.** Okay. Timbreza worked for a staffing company?

5 **A.** Yes.

6 **Q.** And after this incident, you understood that Mr. Timbreza
7 was laid off?

8 **A.** I believe he got laid off.

9 **MR. ORGAN:** Objection. Misstates testimony.

10 **THE WITNESS:** I don't --

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I believe he got laid off. I didn't
13 have -- maybe he -- yeah. I --

14 **BY MR. SPIRO:**

15 **Q.** Okay. And after this incident, Mr. --

16 **A.** I mean, so in answer to your question, not after this
17 direct incident he got laid off. It was his first verbal
18 warning. I believe he had other incidents after that which led
19 to his layoff.

20 Like I said, Mr. Romero said there was paperwork that
21 said, okay, just -- you get three written write-ups and then
22 you're laid off. You get your verbal, your written, and
23 your -- whatever it was after that. It was his paperwork from
24 nextSource.

25 **Q.** Well, all you know -- all of those things may or may not

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1 have happened. You don't know. Okay. All you know is that
2 after this incident at some point soon thereafter, Judy did not
3 work for Tesla anymore; true?

4 **A.** After this incident, yes. I mean, but like I said, it
5 wasn't this incident that he got laid off because I still
6 worked there. He did not get laid off after this specific
7 incident.

8 **Q.** I didn't say. I just said soon thereafter he was laid
9 off; true?

10 **A.** Correct.

11 **Q.** Now, after this incident, Mr. Diaz was promoted; correct?

12 **A.** Correct.

13 **Q.** And he was given a pay raise; correct?

14 **A.** Correct.

15 **Q.** You mentioned on direct examination Mr. Quintero as
16 someone who you went to when promoting Owen Diaz?

17 **A.** Correct. They asked me who I wanted to put in that
18 position for that place. Mr. Diaz showed up every day. He
19 worked hard. That was the best person at that time for me to
20 put in that position because I knew the elevator was going to
21 get taken care of.

22 **Q.** Sir, that wasn't my question. My question is just simply:
23 Mr. -- you said that Mr. Quintero was someone you went to when
24 promoting Mr. Diaz.

25 **A.** Correct Mr. Quintero was the highest up in environmental

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1 sustainability.

2 **Q.** Right. But what you didn't mention to this jury is that
3 Mr. Romero took your suggestion and promoted Owen Diaz.

4 **A.** No. That's not how that went. If that's what you want to
5 read the e-mail, that's not how that went. I ran the overnight
6 crew. They asked me who I wanted in that position. I had a
7 relationship with Mr. Quintero and Jaime Salazar before Ed even
8 came into the picture, so they asked me directly who I wanted
9 in that position. Now if Ed spun that in his e-mail and made
10 it seem like it was him, that's not how it actually happened.

11 **Q.** Okay. At this time I would ask to play the deposition,
12 24:3 to 24:15.

13 **THE COURT:** Hold on just a second. Let me take a look
14 at that, Counsel.

15 **MR. SPIRO:** Thank you, Your Honor.

16 **THE WITNESS:** What page was that?

17 **THE COURT:** 24.

18 **MR. SPIRO:** I'm asking to impeach at this point,
19 Your Honor.

20 **THE COURT:** I understand.

21 **MR. SPIRO:** Yeah.

22 **MR. ORGAN:** 3 to what, Your Honor?

23 **THE COURT:** 3 to 15.

24 **MR. ORGAN:** That's fine. No objection.

25 **THE COURT:** You may proceed.

KAWASAKI - CROSS / SPIRO

1 **MR. SPIRO:** Can you play that, please, sir.

2 (Video was played but not reported.)

3 **MR. SPIRO:** Can you turn this up a little bit?

4 (Pause in proceedings.)

5 (Video was played but not reported.)

6 **THE WITNESS:** So it wasn't Ed.

7 **THE COURT:** Hang on. He has got to ask you a
8 question.

9 **THE WITNESS:** Sorry.

10 **THE COURT:** It's okay.

11 **BY MR. SPIRO:**

12 **Q.** Is that the sworn testimony you gave?

13 **A.** That is my sworn testimony.

14 **Q.** Okay. I can tell that you want to -- withdraw.

15 **MR. ORGAN:** Objection.

16 **THE WITNESS:** What does that mean?

17 **THE COURT:** Strike that statement.

18 Ask questions, Mr. Spiro, please.

19 **BY MR. SPIRO:**

20 **Q.** You remember that Mr. Diaz and Mr. Martinez, Ramon
21 Martinez did not get along; true?

22 **A.** From their recollect- -- from the incident they had,
23 I believe they didn't. Like I said, I don't control what Ramon
24 did during the shift that I wasn't there.

25 **Q.** I totally get that. That's not my question. My question

KAWASAKI - CROSS / SPIRO

1 is just simply other than the incident, do you remember
2 generally that Mr. Diaz and Mr. Martinez didn't get along?

3 **A.** I know vaguely Ramon didn't like that Mr. Diaz got
4 promoted to the elevator shift lead.

5 **Q.** Okay. And Owen told you that they didn't like each other;
6 correct?

7 **A.** After the incident -- after the incident they had, they
8 had their beef. Owen said, "I don't like that guy." I said,
9 "You can't control if you are working the day where he is the
10 supervisor. He is a supervisor." You -- I told Owen, "You
11 just control your elevator. That's what you're here for.
12 You're here for to take care of the elevator. You don't got to
13 do anything else but make sure this elevator goes up and down."

14 **Q.** Also not my question. My question is just simply before
15 the incident, Owen had told you that he and Mr. Martinez did
16 not like each other; correct?

17 **A.** Before the incident?

18 **Q.** Yes.

19 **A.** Maybe he mentioned it.

20 **Q.** Okay.

21 **A.** Possibly, maybe.

22 **Q.** And you ended up talking to Mr. Diaz about the incident
23 that you are talking about in the elevator now, October 17.
24 You spoke to Mr. Diaz about that; right?

25 **A.** Between him and Ramon?

KAWASAKI - CROSS / SPIRO

1 Q. Yes.

2 A. Mr. Diaz called me when I was at home and asked me to look
3 at the cameras and did you see what happened, and I referred to
4 Mr. Diaz and said, "Put it in the e-mail form about the
5 situation that happened so you are backed up if something
6 happens. It's an e-mail, and they can look at the cameras." I
7 only have access so far to the cameras, like I mentioned.

8 Q. And you, in that conversation with Mr. Diaz, understood,
9 as you said a couple of questions ago, that this had to do
10 with -- this dispute had to do with Ramon contesting Owen's --
11 how Owen was handling the elevator basically; right?

12 A. I know he didn't like that Owen got promoted to an
13 elevator lead, that's all. I know he didn't like it.

14 Q. Okay. And -- but Owen was really under your --

15 A. Owen worked under me, like I said. But I can't control
16 the days I wasn't there. I was there five days a week. Ramon
17 covered my two days that I was off and worked the day shift the
18 other three days.

19 Q. And Exhibit 235, which is in evidence, we are going to
20 look at -- and we can put up -- you ended up looking at the
21 surveillance camera; right?

22 A. Yes, sir.

23 Q. And you saw them face to face?

24 A. That's all I saw and the camera stopped. That's why I
25 told Mr. Diaz to put it in an e-mail form about the incident

KAWASAKI - CROSS / SPIRO

1 that happened so you back yourself in this situation, and they
2 were able to look at it and do what they have to do about it.

3 **Q.** Right. And you didn't, you know, destroy the video to
4 cover up anything?

5 **A.** I only had access to look at the computer. I didn't have
6 access to anything other than that. Like I said, it wouldn't
7 let me play back farther than what it took me, so they only
8 gave me access to so far back in the footage.

9 **Q.** And you got this e-mail, right, from?

10 **A.** Yeah. He CC'd me on it as well.

11 **Q.** Just like you had instructed him to do?

12 **A.** Uh-huh.

13 **Q.** And there is obviously nothing in this e-mail that
14 mentions anything about race; true?

15 **A.** True. I just --

16 **Q.** And when Mr. Diaz sent this e-mail, he was telling
17 supervisors that Mr. Martinez had done something wrong; fair?

18 **A.** He -- he CC'd me on the e-mail. I don't know if he told
19 any other supervisors, but I know he CC'd Edward Romero on it,
20 and that's where we go from there.

21 **Q.** He CC'd two people higher than him on an e-mail
22 complaining about somebody to get them in trouble; right?

23 **A.** What do you mean "complaining"?

24 **MR. ORGAN:** Objection. Calls for speculation.

25 **THE WITNESS:** That's a vague question. I can't answer

KAWASAKI - CROSS / SPIRO

1 that.

2 **BY MR. SPIRO:**

3 **Q.** And this e-mail, after you received it and received that
4 issue that night with Mr. Martinez, for years you weren't asked
5 about that e-mail; right? You didn't see that e-mail in the
6 year that followed and the year that followed after that?

7 **A.** When I left Tesla, I did not have access to the server
8 anymore. I didn't have access to my Tesla e-mail. This
9 situation, Ed Romero was CC'd on it. He was the first person.
10 He was the person that should have took care of this. It
11 wasn't on me. Like I said, I didn't work that day. I just
12 told Owen to CC me on it.

13 **Q.** Understood.

14 **A.** Because that's what -- I said, "Any e-mail that you send
15 out for the elevators, I want to be aware of it."

16 **Q.** Understood.

17 And afterwards, years later when you were first called by
18 Mr. Diaz's lawyers, you told them that "This was years ago. If
19 you have my e-mails, I can recollect, check the e-mails."
20 Right?

21 **A.** Correct.

22 **Q.** Okay. And you were then deposed, which we talked about;
23 right?

24 **A.** Uh-huh.

25 **Q.** And you have that in front of you?

KAWASAKI - CROSS / SPIRO

1 **A.** The deposition, yes.

2 **Q.** If you look at the back, there is an index?

3 **A.** Yeah.

4 **Q.** Can you go to the back and make sure there is an index?

5 **A.** Yes, there is an index.

6 **Q.** Okay. And nowhere in your deposition do you ever say that
7 Mr. Martinez ever used the word "mayate"; correct?

8 **MR. ORGAN:** Objection.

9 **THE COURT:** Yeah, sustained. How could you -- unless
10 you want him to sit here and read his entire deposition while
11 you're -- as this case proceeds, then you can withdraw the
12 question.

13 **MR. SPIRO:** Well, I would ask: "Can you look at the
14 index to see if the word 'mayate' is ever noted in his
15 testimony." I think it's a fair question.

16 **MR. ORGAN:** It's compound, Your Honor.

17 **THE COURT:** Well, it's not compound, but that still
18 doesn't answer the question of whether it's in the deposition
19 or not. It answers the question of whether it's in an index.

20 **MR. SPIRO:** Fair enough.

21 **BY MR. SPIRO:**

22 **Q.** I'm asking is the word "mayate" in the index?

23 **A.** No.

24 **Q.** Okay. And right at the Ms, if you are in the Ms, right,
25 Martinez is brought up 19 times in your deposition.

KAWASAKI - CROSS / SPIRO

1 **MR. ORGAN:** Objection. Relevance, Your Honor.

2 **THE COURT:** Sustained.

3 **BY MR. SPIRO:**

4 **Q.** After your deposition, we talked about how recently you've
5 been meeting with Mr. Diaz's lawyers on Zoom, right, and in
6 their offices; right?

7 **A.** Correct.

8 **Q.** And at this point, you are telling this jury that at some
9 point you heard Mr. Martinez say that word at some point,
10 "mayate"?

11 **A.** When did I say that to the jury?

12 **Q.** I think you said it on --

13 **A.** When did I say "mayate"?

14 **Q.** Okay.

15 **A.** That never came out of my mouth.

16 **Q.** If you are not claiming that, then that's fine.

17 **A.** I'm just asking you when I said "mayate" to the jury. I
18 don't think I used that word; I think you guys used that word.

19 **Q.** You're saying it was in the lawyer's question, not you
20 using it?

21 **A.** I don't believe I said "mayate." I said "chongo."

22 **Q.** Okay. So you --

23 **A.** I didn't say "mayate." I said "chongo" which means
24 gorilla and use emphasis on that.

25 **Q.** You mean in the racist in nature conversation?

KAWASAKI - CROSS / SPIRO

1 **A.** No. You said "gorilla." You say "gorilla" yourself.

2 **Q.** I'm --

3 **A.** I said "chongo." I never said "mayate."

4 **Q.** Okay. So you are saying he said "chongo." Okay.

5 And whatever slurs were thrown around to other people, I
6 think you said on your direct that sometimes people to
7 themselves would be saying --

8 **A.** They were --

9 **THE COURT:** Wait for the question.

10 **THE WITNESS:** Sorry.

11 **BY MR. SPIRO:**

12 **Q.** They were saying words that were racially insensitive to
13 each other, throwing around at each other?

14 **A.** Are you done?

15 **Q.** Yes.

16 **A.** Okay. So yes, the word was thrown around in the Tesla
17 factory. Like I said, you have staffing agency people; they
18 are allowed to play their music while they're working. They're
19 having fun. They're throwing words around casually. I've
20 never seen it thrown where they had a fight and not my
21 recollection of what happened in that instance.

22 **BY MR. SPIRO:**

23 **Q.** And again, other than the complaint of Timbreza, nobody
24 made a complaint to you during your time?

25 **A.** About racial things, no.

KAWASAKI - CROSS / SPIRO

1 **Q.** Yes. And if they had, you would, of course, as you've
2 testified a few times, put it in an e-mail and CC'd everybody
3 like you -- correct?

4 **A.** Correct.

5 **MR. SPIRO:** So if we can -- where is that timeline? I
6 will take the calendar. Thank you so much.

7 **BY MR. SPIRO:**

8 **Q.** And just to sort of finish off that piece, when you heard
9 this word, the N-word being thrown all over the facility, it
10 wasn't in an aggressive, argumentative tone. It was said in a
11 non-offensive manner; right?

12 **A.** Correct. It was just thrown. Like people were just
13 having their conversations. It was just thrown around. Like I
14 said, it's in every rap song known today. So they are playing
15 their music, and they're copying the song. The word is thrown
16 around.

17 **Q.** And it wasn't hurting you. It wasn't hurting your people
18 in doing their job; fair?

19 **A.** Excuse me?

20 **Q.** It wasn't hurting you, and it wasn't hurting your people
21 doing their job, so you didn't pay it much mind?

22 **A.** I don't understand that question.

23 **THE COURT:** What is "it"?

24 **BY MR. SPIRO:**

25 **Q.** The N-word thrown around wasn't hurting you, and it wasn't

KAWASAKI - CROSS / SPIRO

1 hurting your people in doing their job; true?

2 **MR. ORGAN:** Objection.

3 **THE COURT:** Compound.

4 **THE WITNESS:** I --

5 **BY MR. SPIRO:**

6 **Q.** The N-word being thrown around in this manner that you are
7 talking about, this non-offensive manner that you have
8 described, it wasn't hurting your people in doing their job;
9 true?

10 **A.** Are you saying it wasn't bothering me?

11 **THE COURT:** Hang on just a second.

12 **MR. ORGAN:** Objection. Calls for speculation,
13 your Honor.

14 **THE COURT:** To the extent that you can answer that
15 question --

16 **THE WITNESS:** If you are trying to ask if it wasn't
17 bothering me or it didn't affect the job being done, no, it
18 didn't affect the job being done; and it didn't bother me. It
19 didn't bother me because I wasn't throwing the word. I was
20 still just trying to do my job.

21 I didn't control the lines where it was being said. If it
22 was being said by my employees, I would tell them to stop doing
23 it. I don't control the hundred thousand people in the
24 factory.

25 \\\

KAWASAKI - CROSS / SPIRO

1 **BY MR. SPIRO:**

2 **Q.** Sure. And you've said previously that you also believed
3 from your perspective that it wasn't hurting your people in
4 doing their job; true?

5 **A.** It didn't affect people from stopping doing their job, no.
6 The N-word did not stop people from doing their job.

7 **Q.** So, I asked you earlier -- and we talked about how your
8 time at Tesla ends -- again, five, six, seven months after
9 Mr. Diaz joins?

10 **A.** Right.

11 **Q.** So he joins June 3rd, as you testified on your direct, and
12 he's there for six or seven months, and the only racial
13 complaint that you received was the one regarding Timbreza?

14 **A.** Yeah. From me, from my shift, yes, that was the only time
15 that that ever happened from my recollection.

16 **Q.** And at some point, Mr. Diaz's son came to work at Tesla,
17 and you congratulated him; correct?

18 **A.** I congratulated him, but he didn't work under me. He
19 worked on the line. He didn't work for environmental
20 sustainability. Mr. Diaz got him hired probably through one of
21 the staffing agencies. I don't know. I know his son came, and
22 he said his son was working on one of the lines which I had no
23 control over.

24 **Q.** Okay. And you congratulated him; right?

25 **A.** Correct. I mean, he got his son hired at Tesla. It's his

KAWASAKI - REDIRECT / ORGAN

1 son. I mean, you are not going to congratulate somebody
2 getting a job?

3 **Q.** I think you should have. And additionally to that,
4 Mr. Diaz asked you how you would recommend people that he knew
5 to get jobs working at Tesla, and you suggested Chartwell;
6 correct?

7 **A.** Chartwell Staffing, that's how I got hired, so I suggested
8 you go to Chartwell Staffing. I applied through Indeed, and
9 Chartwell Staffing is the one that hired me. So I said, "Okay.
10 If you want" -- at that point I thought that was the only
11 staffing agency, but when I got there, there was four or five
12 other staffing agencies working at the facility.

13 **MR. SPIRO:** No further questions. Thank you. Thank
14 you, sir.

15 **THE COURT:** Mr. Organ, let me ask you about your
16 redirect. How long do you think it's going to be? Short?

17 **MR. ORGAN:** Five minutes, maybe seven.

18 **THE COURT:** Okay.

19 **REDIRECT EXAMINATION**

20 **BY MR. ORGAN:**

21 **Q.** You were asked questions about stuff in your deposition.
22 Have you memorized your deposition?

23 **A.** No. No, this is vaguely the first time I'm really seeing
24 it over again. Like when I met with you, it was just exhibits.
25 There was no deposition.

KAWASAKI - REDIRECT / ORGAN

1 **Q.** Mr. Spiro was keen to ask you some questions about
2 page 36:20 to 37:16. If you can look up in your deposition
3 those pages.

4 **A.** Uh-huh.

5 **Q.** Okay. Now move forward approximately five pages to
6 page 42.

7 **A.** Okay.

8 **Q.** And if you look at page 42 of your deposition, so this
9 would have been given shortly after the snippet that Mr. Spiro
10 talked about?

11 **MR. SPIRO:** Objection.

12 **MR. ORGAN:** If you look at page 42 --

13 **THE COURT:** Hang on. What's the basis of your
14 objection?

15 **MR. SPIRO:** One, he is testifying; and two, this is
16 not in the same context. It's several pages later.

17 **THE COURT:** Okay. Overruled. Let's go to and give
18 Mr. --

19 **MR. ORGAN:** 42, line 24, to 43, line 5.

20 (Pause in proceedings.)

21 **BY MR. ORGAN:**

22 **Q.** Do you see that?

23 **A.** Uh-huh.

24 **MR. ORGAN:** Your Honor, I would like to put it in as a
25 prior consistent statement.

KAWASAKI - REDIRECT / ORGAN

1 **THE COURT:** Any objection?

2 **MR. SPIRO:** Yes. Objection. It's nothing but
3 bolstering, and it's a prior consistent statement that's --

4 **THE COURT:** Overruled. You can -- you may introduce
5 the statement.

6 **BY MR. ORGAN:**

7 **Q.** "QUESTION: Okay. Okay. So let me break that down.

8 So you do recall that Mr. Diaz at least told you that
9 Mr. Timbreza had used the N-word towards him?

10 "ANSWER: Correct.

11 "QUESTION: And you also recall that other people told you
12 that they had heard racial terms used; is that right?

13 "ANSWER: Correct."

14 Those are the questions that were asked of you a few
15 minutes after the snippet that Mr. Spiro played, and those are
16 the responses you gave; correct, sir?

17 **A.** Yes.

18 **Q.** Okay. Mr. Spiro asked you about some graffiti in the
19 bathrooms. Did you see any particular graffiti that was racist
20 in nature?

21 **A.** Yeah.

22 **Q.** Like a swastika or anything like that?

23 **A.** Yeah. Some people would draw swastikas in markers on the
24 doors and on the bathrooms. It happened. But like I said
25 Tesla tried to scratch them off the best they could on the

KAWASAKI - REDIRECT / ORGAN

1 plastic door without having to replace the actual doors for the
2 toilet and stuff.

3 **Q.** Now, at some point, Mr. Spiro asked you about
4 communicating with Mr. Romero.

5 **MR. ORGAN:** And if we could, put up Trial Exhibit
6 Number 40, please.

7 (Pause in proceedings.)

8 **MR. ORGAN:** And if you zoom in at the top part of
9 Exhibit 40.

10 I will move Exhibit 40 in, Your Honor.

11 **THE COURT:** It's admitted.

12 (Trial Exhibit 40 received in evidence.)

13 **BY MR. ORGAN:**

14 **Q.** This is an e-mail you sent to Mr. Romero. "I tried
15 calling you, but I believe I have the wrong numbers. Both say
16 your phone is out of service."

17 So at some time you had some problems communicating with
18 Mr. Romero; is that right?

19 **A.** Yes.

20 **Q.** And that's why you would meet him in person, if possible?

21 **A.** Yes.

22 **Q.** You were asked some questions about the staffing
23 companies. All the people who worked in the factory, they all
24 eventually worked for Tesla ultimately; right?

25 **A.** I don't believe so, no. We were staffing companies. That

KAWASAKI - REDIRECT / ORGAN

1 was the main goal, right, is to get on with Tesla, to be able
2 to get stocks and have a Tesla job. But no, Mr. Romero like I
3 said, he came in; not even I believe a month later he was put
4 into a Tesla role.

5 **Q.** But you're all working under the Tesla roof; right?

6 **A.** Correct. We are all --

7 **Q.** And you are all using Tesla equipment; right?

8 **A.** Yeah. So it took me a while, but I had access to the
9 safety equipment. We all had access to the satellite food
10 kitchens and the free food that they provided. So yes, we were
11 all under Tesla's...

12 **Q.** Mr. Spiro asked you some questions about Mr. Timbreza
13 getting laid off. You actually saw Mr. Timbreza working the
14 very next day after that incident on the 31st; right?

15 **A.** I believe he --

16 **MR. SPIRO:** Objection. Leading every question.

17 **THE COURT:** Sustained.

18 **BY MR. ORGAN:**

19 **Q.** Did you see Mr. -- how soon after the July 31 event did
20 you see Mr. Timbreza working?

21 **A.** If I recollect, I believe that was a day that Mr. Timbreza
22 worked three days, and he was off four; and then the next week
23 he worked four days, and he was off three. So I can't
24 recollect the exact date he came back.

25 **Q.** You -- Mr. Spiro asked you some questions about mayate.

KAWASAKI - REDIRECT / ORGAN

1 Do you remember being asked any questions about mayate in your
2 deposition?

3 **A.** I don't believe so -- I don't know the whole deposition.

4 **Q.** Okay.

5 **A.** I didn't use the word "mayate," so.

6 **Q.** You mentioned to Mr. Spiro about the video on the
7 October 17th incident.

8 **A.** Uh-huh.

9 **Q.** And you said, "They gave me access only so far." Who is
10 the "they"?

11 **A.** So Tesla. So I had to go through Victor and Jaime because
12 they were actually working for Tesla. They told me to stay
13 overnight, stay during the day when the actual computer guys
14 get in. So I believe it was up front by the roasters, I can't
15 recollect, in the warehouse; but that was their computer
16 department. You go in there, give them your phone. They'll
17 give you a token on your phone, and they will give you a
18 computer which you will have access to the Tesla camera system.

19 **Q.** Okay.

20 **MR. ORGAN:** Just two more questions, Your Honor.

21 **BY MR. ORGAN:**

22 **Q.** You said if your people were using any kind of racist
23 statements, you would tell them to stop. Why would you do
24 that?

25 **A.** Because that's not appropriate in the workplace. You

KAWASAKI - RECROSS / SPIRO

1 don't use those words and terms. And like I said, I grew up --
2 if you use those words, you get beat up, you know, so.

3 **Q.** Mr. Spiro asked you some questions about hearing the
4 N-word thrown around while you are walking around. How often
5 do you recall hearing the N-word thrown around?

6 **A.** I can't give you a definite answer of how often I heard
7 it. Like I said, people were playing their music. They were
8 saying the words to the songs, and it was thrown around
9 casually like -- it was nothing.

10 Like I said, when you hire staffing companies, like I
11 said, those are more the people that can't apply during the
12 proper channels, so they go through staffing companies to get
13 these jobs.

14 **Q.** Is it fair to say that -- would it be most of the time you
15 were walking around the factory you would hear it?

16 **A.** I can say fairly regularly. I can't -- like I said, I
17 can't give you a definite answer of how often I heard the word.
18 Like I said, people play their music. When a song comes on,
19 it's thrown away in the songs, so.

20 **MR. ORGAN:** Thank you so much, Mr. Kawasaki.

21 **THE COURT:** All right. Ladies and gentlemen, we
22 are --

23 **MR. SPIRO:** I have one quick follow-up if that's okay.

24 **THE COURT:** Okay.

25 \\\

KAWASAKI - RECROSS / SPIRO**RECROSS-EXAMINATION**

BY MR. SPIRO:

Q. Just one more quick thing --

A. You are all good.

Q. -- about your position.

A. Got to get back to work, so --

Q. So you were asked a question when Mr. Organ first stood up about something that you did say in your deposition --

MR. ORGAN: Beyond the scope, Your Honor.

BY MR. SPIRO:

Q. -- about --

THE COURT: We will figure out what it is.

BY MR. SPIRO:

Q. -- about the N-word being reported to you. And I'm going to ask you to look just before that to be complete.

A. What page?

Q. If we can look at 41.

A. Page 41?

Q. Yep.

A. Line 13.

Q. My question, sir, is: Isn't that true that that word was suggested to you in a question, and you did not --

MR. ORGAN: Move to strike, Your Honor.

THE COURT: I'm striking the question. I think we have completed the examination --

PROCEEDINGS

1 **MR. SPIRO:** Thank you.

2 **THE COURT:** -- of Mr. Kawasaki. Thank you very
3 much --

4 **THE WITNESS:** No problem.

5 **THE COURT:** -- for your testimony.

6 **THE WITNESS:** That's it?

7 **THE COURT:** That's it for you.

8 Ladies and gentlemen, we'll take our first break of the
9 morning, and we will be back at about 10:22 by my watch.
10 Please remember the admonitions which are not to talk about the
11 case or do any research about it.

12 (Proceedings were heard outside the presence of the jury:)

13 **THE COURT:** All right. We will be in recess.

14 (Recess taken at 10:08 a.m.)

15 (Proceedings resumed at 10:22 a.m.)

16 **THE CLERK:** Please come to order.

17 **THE COURT:** Are you ready to proceed?

18 **MR. SPIRO:** Just one moment, Your Honor, if I can
19 address one thing.

20 **THE COURT:** Come up to a live mic.

21 (Pause in proceedings.)

22 **THE COURT:** Please be seated, everybody.

23 **MR. SPIRO:** Your Honor, I just think it's incumbent
24 upon me to put in the record at this point that I felt that the
25 witness was testifying in a manner to slow down the

PROCEEDINGS

1 proceedings, whether he -- he developed that in his own manner
2 or not.

3 And I have concern that if that's the way the witnesses
4 are going to testify, I'm asking for any help that the Court --
5 I looked at the Court a couple times -- can provide just
6 because we are on a clock, and at some point, maybe already, it
7 starts to impinge on the Defense's rights because I have to be
8 able to cross-examine witnesses. When I'm on a clock and the
9 witness on the other side knows that, they can do everything in
10 their power to slow it down.

11 **THE COURT:** I appreciate the concern. Mr. Kawasaki
12 responded in ways that were somewhat lengthy. He was totally
13 credible as far as I was concerned in the way that he was
14 testifying. He was not playing games in the way that he was
15 testifying. I think you got -- you got what you got from the
16 questions that you were asking and his responses.

17 I am aware of it. I think when I see it with different
18 kinds of witnesses who appear to be doing something
19 intentional, I would certainly stop it, but I do not -- I think
20 he did just fine.

21 **MR. SPIRO:** That's all I'm -- I just wanted to alert
22 the Court at this stage with Witness 1 that I will be looking
23 towards the Court for as much guidance and help as I can get in
24 just keeping this moving along. Thank you.

25 **THE COURT:** Okay. Let's get the jury.

WHEELER - DIRECT / COLLIER

(Pause in proceedings.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Please be seated, everybody.

MR. COLLIER: Now Plaintiff will call Michael Wheeler.

THE COURT: Okay.

THE CLERK: If you will step up, I will take a photograph of you.

(Pause in proceedings.)

THE CLERK: Please raise your right hand.

MICHAEL WHEELER,
called as a witness for the Plaintiff, having been duly sworn,
testified as follows:

THE CLERK: Be seated. If you would, please state your full name and spell it for the court reporter.

THE WITNESS: Michael Wheeler. M-I-C-H-A-E-L,
W-H-E-E-L-E-R.

DIRECT EXAMINATION

BY MR. COLLIER:

Q. Good morning, Mr. Wheeler.

A. Good morning.

Q. My first question to you is when did you work at Tesla?

A. 2015 to 2016.

Q. And does April 23, 2015, to April 27, 2016, ring a bell?

A. Yeah. That was the date of my termination.

Q. Now, when you left Tesla, what position did you hold?

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1 **A.** A supervisor.

2 **Q.** And how long were you a supervisor inside the Fremont
3 factory?

4 **A.** I want to say six to eight months.

5 **THE COURT:** Mr. Wheeler, could you pull the mic just a
6 little closer to you. Thank you.

7 **BY MR. COLLIER:**

8 **Q.** How do you know Mr. Diaz?

9 **A.** Mr. Diaz worked on elevators, ferrying objects from first
10 floor to second floor.

11 **Q.** What about Mr. Kawasaki? Do you know him as well?

12 **A.** He was the individual that recommended me for my
13 promotion.

14 **Q.** Understood.

15 What was Mr. Kawasaki's role when you began working there?

16 **A.** He was a supervisor.

17 **Q.** And you took over for him when he left or when he got
18 promoted?

19 **A.** Yes.

20 **Q.** You had an opportunity to observe Mr. Diaz's work
21 performance?

22 **A.** Yes.

23 **Q.** And what was your assessment of his job performance?

24 **A.** He always got the job done.

25 **Q.** What about his demeanor as an employee?

WHEELER - DIRECT / COLLIER

1 **A.** He maintained a professional demeanor.

2 **Q.** Professional, got the job done.

3 (Pause in proceedings.)

4 **BY MR. COLLIER:**

5 **Q.** So if anyone were to come in this courtroom and suggest
6 that Mr. Diaz was a poor performer while working under your
7 leadership, that would be false; correct?

8 **A.** True.

9 **Q.** If anyone were to come in here and suggest that he were
10 unprofessional while working under your leadership, that would
11 be false?

12 **A.** Correct.

13 **Q.** With regard -- I'm sorry. While you were at Tesla, did
14 you receive any training from Tesla on their Anti-Handbook
15 Handbook?

16 **A.** Anti --

17 **Q.** -- Handbook Handbook.

18 **A.** I did not.

19 **Q.** Or any other employee handbook whether or not silly named?

20 **A.** No.

21 **Q.** Okay. And while you were at Tesla, did you receive any
22 training from Tesla on their anti-harassment policy?

23 **A.** None.

24 **Q.** Which shift did your team work on?

25 **A.** Graveyard.

WHEELER - DIRECT / COLLIER

1 Q. I'm going to talk to you a little bit about the use of the
2 N-word on that shift. Okay? Mr. Diaz was also on that shift?

3 A. Yes.

4 Q. During the timeframe you were inside the Tesla factory
5 from 2015 to 2016, did you experience the N-word in the
6 factory?

7 A. I did.

8 Q. And you used a cart to drive yourself around the factory;
9 correct?

10 A. Yes.

11 Q. And what areas of the factory were you -- did you hear the
12 N-word used?

13 A. Throughout the factory. Mostly on the main lines.

14 Q. And were you hearing it from contract employees, direct
15 Tesla employees, or both?

16 A. I mean, it would be impossible to distinguish the
17 difference, so.

18 Q. How often would you say you heard the N-word around the
19 factory?

20 A. Frequent enough to where it would become just another
21 word.

22 Q. You previously testified you heard it daily; is that
23 right?

24 A. Yes.

25 Q. And how did that make you feel?

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1 **A.** Not good.

2 **Q.** And why is that?

3 **A.** Um. Well, the word is used to put individuals of my color
4 down.

5 **Q.** If someone were to come in here and suggest that the
6 N-word wasn't being used on a daily basis, that would be false;
7 correct?

8 **A.** Correct.

9 **Q.** And you heard it used both ways; correct?

10 **A.** In terms of?

11 **Q.** The "A" version and the "ER" version?

12 **A.** Yes.

13 **Q.** And they're both unacceptable in the workplace; correct?

14 **A.** Agreed. Yeah.

15 **Q.** Did you ever hear the term "mayate" used?

16 **A.** I did.

17 **Q.** And you understood that to be the Spanish version of the
18 N-word?

19 **A.** Yes.

20 **Q.** Now, are there any occasions while you were working at
21 Tesla that you notified management you had heard the N-word?

22 **A.** Yes.

23 **Q.** Tell us about that.

24 **A.** The most prominent one would be the time I was called the
25 N-word directly while trying to discipline a subordinate.

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1 Q. And what had the subordinate done?

2 A. So I had an employee that was taking his lunch break, and
3 so he was sleeping, and the associate took a picture of that
4 employee. They brought the picture to me and told me I need to
5 discipline him. And I told him I was aware that he was on his
6 lunch break, and then I asked the associate to delete the
7 picture. And as he refused to delete the picture, he started
8 walking away. And as he walked away, he used the hard R in
9 response.

10 Q. And by hard -- go ahead.

11 A. In response.

12 Q. Okay. And by "hard R," you mean the N-word with the ER at
13 the end?

14 A. Yes. Correct.

15 Q. And, in fact, he said, "F you, N-word"; right?

16 A. Yes.

17 Q. And of course, he didn't spell it; he said it?

18 A. He said it.

19 Q. Who did you report this incident to?

20 A. So I reported this to Josue Torres, a Tesla employee;
21 Victor Quintero, a Tesla employee; and Ramon Martinez.

22 Q. And Ramon Martinez was also a supervisor; correct?

23 A. He was.

24 Q. As a result of your report of the N-word being used by the
25 subordinate to Ramon Martinez and Victor Quintero and Ed

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1 Romero, what actions were taken by Tesla?

2 A. He received a promotion.

3 Q. I'm sorry. Who received a promotion?

4 A. The guy that called me the N-word.

5 Q. And how did that make you feel?

6 A. Not good.

7 Q. That person's name was Jesus?

8 A. Correct.

9 Q. And Jesus was then not only disciplined -- not only was he
10 not disciplined, but he was given his own team to lead; is that
11 right?

12 A. Yeah.

13 Q. During your time at the Tesla Fremont factory, did you
14 ever observe -- are you okay, Michael?

15 A. I'm good.

16 Q. There is tissues there if you need them. All right.

17 During your time at the Tesla factory, did you ever see
18 any swastikas?

19 A. I did.

20 Q. Tell us about that.

21 A. You would either see them in the restrooms, or I believe I
22 saw one on the elevator, and then the most rememberable one was
23 the one on the back of the gentleman's head as he was exiting
24 the building.

25 Q. You saw a swastika tattoo on the back of someone's head?

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1 A. Yeah.

2 Q. And you said you also saw them in the restroom?

3 A. Yes.

4 Q. In the form of graffiti or scratched in?

5 A. Yeah.

6 Q. When you saw these swastikas, was that before, after, or
7 both -- sorry. Let me rephrase that.

8 Was that before you became a supervisor, after you became
9 a supervisor, or both?

10 A. I would say both.

11 Q. And would it be fair to say that you saw swastikas
12 regularly throughout your employment at Tesla?

13 A. I would say I saw them in the restrooms and the places I
14 mentioned.

15 Q. And Mr. Diaz also reported to you that he saw the N-word
16 in the bathrooms; correct?

17 A. Correct, yes.

18 Q. So if anybody were to come in here and suggest that
19 Mr. Diaz never complained about the use of the N-word at Tesla,
20 that would be false; right?

21 A. Correct.

22 Q. I'm going to talk to you about the cart incident so you
23 know what I'm referring to.

24 There was another incident that you believe to be racially
25 motivated while you were there; correct?

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1 **A.** Yes.

2 **MR. SPIRO:** Objection. Leading every question.

3 **THE COURT:** Sustained. Rephrase.

4 **MR. COLLIER:** Apologies.

5 **BY MR. COLLIER:**

6 **Q.** Why don't you tell us what happened with the cart, sir?

7 **A.** There was one evening where I went to lunch, and it was
8 about 30 minutes or so. Came back to my cart and slid into the
9 seat in which I noticed there was a wet feeling on my pants.

10 So I got out of the seat and I had sat in feces.

11 **Q.** And so there was feces in the chair of your cart; is that
12 what you're saying?

13 **A.** Yes.

14 **Q.** And what about the steering wheel?

15 **A.** Not on the steering wheel.

16 **Q.** Did you report this incident to anyone in management?

17 **A.** I did.

18 **Q.** Who did you report it to?

19 **A.** I reached out to security. I asked them to check the
20 cameras in which they responded they didn't have an angle on
21 the cart. I reached out to Josue Torres, Victor Quintero, and
22 Ramon. I sent e-mails, basically, to anyone I could think of.

23 **Q.** Ramon, again, is Ramon Martinez?

24 **A.** Yes.

25 **Q.** And I think you said Ed Romero as well?

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1 **A.** I do not recall.

2 **Q.** Don't recall Romero. Understand. All right.

3 Now, Victor Quintero was the top Tesla supervisor over
4 your department; correct?

5 **A.** Correct.

6 **Q.** So you reported it to numerous managers and supervisors?

7 **A.** Uh-uh.

8 **Q.** Yes?

9 **A.** Yes.

10 **Q.** To your knowledge, was anyone disciplined?

11 **A.** Not to my knowledge.

12 **Q.** To your knowledge, was there even an investigation?

13 **A.** Not at all.

14 **Q.** Do you still have the e-mail where you reported this
15 incident to management?

16 **A.** I do not. My phone with it was confiscated.

17 **Q.** Who confiscated it?

18 **A.** The swing shift supervisor, Israel.

19 **Q.** For Tesla?

20 **A.** Yes. Yes.

21 (The court reporter asked for clarification.)

22 **BY MR. COLLIER:**

23 **Q.** And you also took photos of the feces incident; correct?

24 **A.** Yes.

25 **Q.** Also stored on your phone?

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1 A. Correct.

2 Q. Where were the video cameras, the surveillance cameras, in
3 the Tesla factory?

4 A. They are everywhere. Um, I would say my issue with this
5 incident was my vehicle was parked next to Elon's Roadsters,
6 which are his most valuable cars in that factory. Yet there
7 was no camera watching his cars.

8 Q. Who told you there was no camera watching the location?

9 A. Security.

10 Q. And did you believe them?

11 A. I did not.

12 Q. All right. So bottom line is there was no video reviewed
13 of the cart incident to figure out who did it; correct?

14 A. Correct.

15 Q. So if anyone were to come in here and suggest that there's
16 a lack of documentation of the cart incident, that's because
17 they didn't pull the video; right?

18 A. Correct.

19 Q. Did anyone ever interview you about this incident?

20 A. No.

21 Q. Was there any retraining about it?

22 A. No.

23 Q. Any diversity training?

24 A. No.

25 Q. Any indication they were upset at all about it?

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1 **A.** No.

2 **Q.** How did you feel about all of that?

3 **A.** I felt like I couldn't trust anyone in the factory.

4 **Q.** During your time at Tesla, did anybody ever tell you that
5 Tesla had a zero-tolerance policy for harassment?

6 **A.** No.

7 **MR. COLLIER:** I'd like to display Exhibit 33, page 3,
8 already in evidence.

9 **THE COURT:** Turn on the camera. They are not on.

10 **MR. COLLIER:** There we go.

11 **BY MR. COLLIER:**

12 **Q.** Mr. Wheeler, do you recognize this drawing?

13 **A.** I do.

14 **Q.** How is it that you came into contact with this drawing?

15 **A.** So initially, I received a phone call on my way to work
16 about an incident that had taken place, and upon arriving to
17 the facility, I was picked up from the front door and driven to
18 where this picture was.

19 **Q.** And who brought it to your attention?

20 **A.** So I was called by -- if my memory serves correctly --
21 Israel from the swing shift.

22 **Q.** And when Israel brought you to the bale, Mr. Diaz was
23 already there?

24 **A.** Yes.

25 **Q.** Did you have a discussion with Mr. Diaz and Israel about

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1 the drawing?

2 A. I did.

3 MR. COLLIER: I'd like to also -- could we display 133
4 side by side? 133 also in evidence.

5 BY MR. COLLIER:

6 Q. This is the cartoon on the right here. You can see that?

7 A. (No response.)

8 Q. This is the cartoon that Mr. Martinez testified that he
9 was trying to draw. Have you ever seen it before?

10 A. No. Not that cartoon.

11 Q. During this conversation you had with Owen, how did he
12 appear?

13 A. He was very upset.

14 Q. And what leads you to say that? What did you observe?

15 A. Body language, tone.

16 Q. And what did he say or do to lead you to the conclusion he
17 was really upset?

18 A. Just like I mentioned before, it was just out of character
19 for him to be flustered.

20 Q. And you testified previously about Mr. Diaz being from a
21 different generation?

22 A. Yes.

23 Q. What does that --

24 MR. SPIRO: Objection. Objection to the leading every
25 question.

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1 **THE COURT:** I think that was setting up to the -- to
2 the question. So overruled as to that.

3 **BY MR. COLLIER:**

4 **Q.** What is the significance of this cartoon for someone of an
5 older generation like Mr. Diaz?

6 **MR. SPIRO:** Objection. How can he testify to that?

7 **THE COURT:** Yeah. That's called for speculation.
8 Sustained.

9 **BY MR. COLLIER:**

10 **Q.** You're familiar with the fact -- well, strike that.
11 Do you know what a "jigaboo" is?

12 **A.** I do.

13 **Q.** What is a jigaboo?

14 **A.** So a jigaboo is referring to -- well, it is another term
15 that is not equivalent to the N-word but another derogatory
16 term used to put down African Americans.

17 **Q.** And it's also a term that used to be used for this kind of
18 drawing; correct?

19 **A.** Yes.

20 **Q.** And you're familiar with -- I take it, in your life you
21 have interacted with an older generation of African Americans?

22 **A.** My mother.

23 **Q.** And for the record, you are African American?

24 **A.** I think so.

25 (Laughter)

1 **BY MR. COLLIER:**

2 **Q.** And so what is the significance of Mr. Diaz being from an
3 older generation with regard to this cartoon?

4 **A.** The significance of this from older generations would be
5 "boo" did not have multiple meanings at that time. It was only
6 a racial slur.

7 **Q.** Now, Mr. -- at some point Mr. Martinez joined you all in
8 this conversation; correct?

9 **A.** Correct.

10 **Q.** And how long was it before he spoke?

11 **A.** After he had joined us?

12 **Q.** Uh-huh.

13 **A.** I cannot recall the exact time.

14 **Q.** Understood.

15 Did he immediately accept responsibility?

16 **A.** He did not.

17 **Q.** He did not. How long did it take him to accept
18 responsibility for the drawing?

19 **A.** After we -- or after I suggested that someone else was
20 responsible for it.

21 **Q.** And did Mr. Martinez say anything else during that
22 timeframe?

23 **A.** After I suggested he try to take accountability and said
24 no one else was involved.

25 **Q.** And did he also tell you words to the effect --

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1 **MR. SPIRO:** Objection. Leading.

2 **THE COURT:** Overruled at the moment.

3 **BY MR. COLLIER:**

4 **Q.** Did he also say words to the effect of this is a joke or
5 you people can't take a joke?

6 **THE COURT:** Sustained. Can you -- try to ask him
7 directly.

8 **MR. COLLIER:** Fair enough.

9 **BY MR. COLLIER:**

10 **Q.** What did he say about it being a joke, to your
11 recollection?

12 **A.** He said he thought it would be funny. Something of that
13 caliber.

14 **Q.** At any point during this conversation, did he express any
15 sort of remorse?

16 **A.** Never.

17 **Q.** Did he apologize to Mr. Diaz?

18 **A.** Not to my knowledge.

19 **Q.** Tell us what Mr. Martinez did to you after you reported
20 this drawing to management?

21 **A.** He did not do anything directly to me.

22 **Q.** Tell us about the conversation you had with him when you
23 were let go?

24 **A.** So the day I was let go -- yeah. He said he didn't know
25 what was going on and -- yeah. Yeah. Um, yeah. He was saying

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1 he would, like, call around and try and get to the bottom of
2 it, even though he was the bottom of it.

3 **Q.** What do you mean by that?

4 **A.** He was the one that had me terminated.

5 **Q.** And what did they tell you was the reason you were being
6 terminated?

7 **A.** Well, he said I was an asset to the company. They
8 appreciated everything that I did and they valued my services,
9 and it was time to part ways.

10 **Q.** And did they give you any other reason for your
11 termination?

12 **A.** Not until I basically begged for one.

13 **Q.** And what did they say then?

14 **A.** They said I told one of my subordinates what to do.

15 **MR. COLLIER:** I have no further questions at this
16 time.

17 **THE COURT:** Mr. Spiro.

18 **CROSS-EXAMINATION**

19 **BY MR. SPIRO:**

20 **Q.** Good morning, Mr. Wheeler.

21 **A.** Good morning.

22 **Q.** Victor Quintero at the start of your time at Tesla was the
23 one who originally interviewed you and hired you; right?

24 **A.** I do not recall.

25 **Q.** Mr. Quintero signed off on your promotion; correct?

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1 **A.** I would -- since he was in charge, I would assume so.

2 **Q.** And when you were promoted, that was within months of you
3 being at the factory, and you had already taken on that level
4 of responsibility; right?

5 **A.** Correct.

6 **Q.** And you got -- you went through some training, and you got
7 some certificates.

8 Do you remember that?

9 **A.** I have forklift certificates, yes.

10 **Q.** Okay. And other certificates as well, sir?

11 **A.** No.

12 **Q.** You don't remember any other certificates that you had at
13 this time?

14 **A.** Not anything outside of the forklift operation.

15 **Q.** Okay. And under your supervision, there were 20-plus
16 employees; right?

17 **A.** Yes.

18 **Q.** And one of your -- one of the people that at least you had
19 some supervisor responsibility over was Owen Diaz?

20 **A.** Yes.

21 **Q.** Okay. And one thing about Owen was that he was very
22 direct; true?

23 **A.** True.

24 **Q.** And Mr. Diaz never told you that Ramon Martinez ever used
25 the N-word with him; correct?

1 **A.** I cannot recall.

2 **Q.** And Mr. Diaz never told you that anyone called him the
3 N-word; correct?

4 **A.** That's false.

5 **Q.** Prior to the drawing that you were just shown in evidence,
6 Mr. Diaz never talked to you about the use of the N-word at the
7 factory; true?

8 **A.** I cannot recall.

9 **Q.** Well, you don't have any memory that you can give this
10 jury about Mr. Owen Diaz ever complaining to you about the use
11 of the N-word at the factory prior to the drawing. True?

12 **MR. COLLIER:** Objection. Asked and answered. And
13 argumentative.

14 **THE COURT:** No. Overruled.

15 **THE WITNESS:** So to answer your question, lots of
16 people complained about the N-word, so for me to say that
17 Mr. Diaz did or did not would not be accurate. It was a
18 continuous complaint that was never addressed.

19 **BY MR. SPIRO:**

20 **Q.** You were partner supervisors in that role with Ramon
21 Martinez when you got promoted; is that a fair description?

22 **A.** Yes.

23 **Q.** And you described yourself as his right-hand man; right?

24 **A.** Yes.

25 **Q.** And you never heard Mr. Martinez use the N-word; correct?

1 A. Not in English.

2 Q. You never heard Mr. Martinez say the word "mayate" in your
3 presence?

4 A. I can't recall.

5 Q. You can't recall.

6 You worked with him every day?

7 A. It's been seven years.

8 Q. You never heard him use the N-word; correct?

9 A. Not in English.

10 Q. You never heard Mr. Martinez use any racial slurs inside
11 the Tesla workplace between 2015 and 2016; correct?

12 A. I cannot recall.

13 MR. SPIRO: Can we put up Exhibit 1, please?

14 (Pause in proceedings.)

15 BY MR. SPIRO:

16 Q. You were looking earlier in your testimony about a -- this
17 drawing on this screen that's in the middle, but I wanted to
18 give you the full picture of what the cardboard bale looked
19 like. Do you remember this?

20 A. I do.

21 Q. Okay. And I don't think we've had any testimony about
22 what is in that left corner of that cardboard bale?

23 A. It was a Pac-Man.

24 Q. And when you first saw the drawing in this context, your
25 first reaction was not a full laugh but like a chuckle and then

1 you realized pretty quickly that Owen was upset. Fair?

2 **A.** Fair.

3 **Q.** And the truth is, based on your experience with
4 Mr. Martinez up until this point in time, you didn't even
5 believe he could have done this drawing. True?

6 **MR. COLLIER:** Objection. Relevance. Speculation.

7 **THE COURT:** Overruled.

8 You can answer.

9 **THE WITNESS:** I wouldn't say it was a belief. I
10 assumed someone else was in the room with him.

11 **BY MR. SPIRO:**

12 **Q.** Well, I'm going to ask you a very direct question. You
13 never believed that Ramon Martinez drew this drawing; is that
14 right?

15 **A.** I did not think he drew the drawing.

16 **Q.** But he was dead set on taking accountability for what he
17 had done. True?

18 **A.** Yes.

19 **Q.** And he said something like that he was joking, or
20 something along those lines, he was only joking. Did he say
21 something like that?

22 **A.** Yeah.

23 **Q.** And the truth is you're not sure as you sit here whether
24 or not he did apologize; correct?

25 **A.** He did not apologize.

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1 Q. Well, I'm asking you a specific question.

2 MR. COLLIER: Objection. Argumentative.

3 THE COURT: Sustained.

4 Just ask the question.

5 BY MR. SPIRO:

6 Q. You're not sure that Mr. Martinez ever apologized. True?

7 A. He did not apologize in my presence.

8 Q. And your reaction to this was that he should receive a
9 write-up. True?

10 A. I believe someone should have been written up for it, yes.

11 Q. Okay. But Mr. Diaz was rightfully upset?

12 A. Yes.

13 Q. Okay. And you were shown earlier in this matter
14 Exhibit 33, which has an indication, it's the statement by
15 Mr. Diaz, that: "This is not the first time Ramon Martinez has
16 been spoken to about his behavior."

17 Do you remember that?

18 A. It sounds vaguely familiar.

19 Q. Okay. And your reaction when seeing that was that it must
20 have been that Martinez slept on the job so much because you
21 were already covering for him, you were always covering for
22 him.

23 Do you remember that?

24 A. I do remember covering for him.

25 Q. But do you remember that being your reaction to the

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1 statement "Martinez has done this before," that your
2 reaction -- "has been spoken to about his behavior before,"
3 that your reaction was, "His behavior must mean he was sleeping
4 on the job, and I was covering for him."

5 Do you remember that reaction?

6 **MR. COLLIER:** Objection.

7 **THE COURT:** I'm sorry. The objection was compound.

8 Could you break it down because that was hard to follow?

9 **MR. SPIRO:** Sure.

10 **BY MR. SPIRO**

11 **Q.** So I had asked you earlier if you remember that you were
12 shown a document that said that Mr. Martinez had been spoken to
13 about his behavior that Mr. Diaz wrote following the drawing
14 incident, and you said you vaguely remembered.

15 So what I'm asking you now is: Do you recall whether your
16 immediate reaction to looking at that phrase, that phrase which
17 is, "This is not the first time Ramon Martinez has been spoken
18 to about his behavior," your immediate reaction was "That must
19 be referring to the fact that Ramon Martinez slept on the job a
20 lot"?

21 **MR. COLLIER:** Objection. Vague. Compound. And
22 hearsay.

23 **THE COURT:** Overruled.

24 You can answer if you know, if you remember.

25 **THE WITNESS:** I must have misheard you earlier. I

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1 don't even recall seeing a document for Ramon.

2 **MR. SPIRO:** Okay. If we can put back on -- Exhibit 1
3 up on the screen.

4 (Pause in proceedings.)

5 **BY MR. SPIRO:**

6 **Q.** How -- how much -- how much do you think, sir, as somebody
7 that had to observe this -- and I'm sorry that this was drawn.

8 How much do you think that you ought to receive in damages
9 for this?

10 **MR. COLLIER:** Objection. Relevance.

11 **THE COURT:** Overruled. The -- the objection is
12 sustained. And move on to the next question.

13 **BY MR. SPIRO:**

14 **Q.** The way you have described hearing the N-word at the
15 factory was that it was not outside of the friendly context, so
16 GA instead of ER but never really aggressively. That was the
17 general impression you had of the use of the N-word at the
18 factory. True?

19 **A.** Outside of the story that I mentioned?

20 **Q.** Outside of the story that you mentioned, that was the
21 general reaction you had. True?

22 **A.** That's a difficult question to answer. I feel like that
23 story is very telling. That is my story.

24 **Q.** That story was upsetting to hear, and we will talk about
25 it. But for now, I still have to ask you this question before

1 we get to it, which is generally, other than that story, when
2 you heard the N-word used in the factory, you did not hear it
3 generally outside of the friendly context, you heard GA instead
4 of ER, never really aggressively; isn't that fair, sir?

5 **A.** Fair.

6 **Q.** Okay. And you heard everybody using it in a not
7 aggressive way; right?

8 **A.** If we can remove the word "nonaggressive," it would be
9 more so be used in an aggressive manner.

10 **Q.** You never -- other than the one story we're going to talk
11 about, you said that you didn't think it was used in an
12 aggressive way at all. True?

13 **A.** Did I write or say "at all"?

14 **Q.** You said "at all."

15 **A.** Well, then, if that's what I said, yes.

16 **Q.** Okay. And when you talked about the graffiti in the
17 bathroom, you didn't personally see, as you recall, any N words
18 in the bathroom; right?

19 **A.** Correct.

20 **Q.** And, in fact, when a gentleman named Hector mentioned to
21 you the graffiti in the bathroom, you, quote, didn't care.
22 True?

23 **A.** I do not recall that.

24 **Q.** Do you recall caring whether -- when Hector told you, or
25 you have no memory of that?

1 **A.** I do not recall. Hector was not a very responsible
2 individual.

3 **Q.** And you said some testimony about somebody with a swastika
4 on their head and some swastika graffiti. When you were first
5 asked about swastikas in the bathroom, you also didn't recall
6 seeing any; isn't that true?

7 **A.** I do not recall.

8 **Q.** Okay. So after the lawsuit in this case was filed, right,
9 so that you're now gone from Tesla for a year or so or more,
10 you got a call from Mr. Diaz that your name would be given to
11 his lawyers and you may be called upon to testify. True?

12 **MR. COLLIER:** Objection. Argumentative.

13 **THE COURT:** Overruled.

14 You can answer.

15 **THE WITNESS:** I do not remember the timeframe, but I
16 did receive a call from Owen.

17 **BY MR. SPIRO:**

18 **Q.** Right. But it was after you left Tesla?

19 **A.** After I was terminated, yes.

20 **Q.** After you were terminated. Okay.

21 And in that phone call, he told you that one of the things
22 he wanted you to know was that there was an incident with his
23 son where his son was called a racially offensive word, too;
24 right?

25 **A.** Yes.

WHEELER - CROSS / SPIRO

1 Q. And he told you that he had -- there was video of that;
2 right?

3 A. Yes.

4 Q. And you then said, well, you know, you should know that
5 there was this incident that you told the jury about, the feces
6 on the car. You told him about it. True?

7 A. True.

8 Q. And you described to the jury how you sat in it; right?

9 (No response.)

10 Q. Is that a "yes"?

11 A. Yes.

12 Q. And how upsetting it was; right?

13 A. How upsetting, yes.

14 Q. And understandably so. And you took a photo of it?

15 A. Yes.

16 Q. And you e-mailed Victor Quintero about it?

17 A. Yes.

18 Q. You were asked, "Didn't you e-mail Ed Romero about it?"

19 You said you didn't remember e-mailing Ed Romero; right?

20 A. I said I did not remember.

21 Q. Okay. And you believed this to be, I think is your
22 testimony, a deliberate racial act; is that true?

23 A. Yes.

24 Q. And you give that testimony here in a case about, as you
25 know, racial discrimination; right?

1 **A.** Yes.

2 **Q.** And you've told this jury about how your phone was
3 confiscated with the -- with the picture on it; right?

4 **A.** Yes.

5 **Q.** How nobody conducted any interviews; right?

6 **A.** Correct.

7 **Q.** How nobody did any training; right?

8 **A.** Correct.

9 **Q.** And how nobody seemed upset at all; right?

10 **A.** Right.

11 **Q.** And the reason for that, as you know, sir, is because this
12 was somebody that got sick and had an accident and they told
13 you that in an e-mail, sir, and this wasn't racial at all;
14 isn't that true, sir?

15 **MR. COLLIER:** Objection. Outside the scope of the
16 prior proceeding.

17 **THE WITNESS:** Not true.

18 **MR. COLLIER:** And also argumentative and speculative.

19 **THE COURT:** Overruled.

20 You can answer to the extent that you know.

21 **BY MR. SPIRO:**

22 **Q.** Isn't it true, sir, that they e-mailed you and told you
23 that somebody got sick and they needed to race that person to
24 get them some help because they were -- had the stomach flu and
25 they used your car, and that's why there was some substance on

WHEELER - CROSS / SPIRO

1 the car; isn't that true, sir?

2 **THE WITNESS:** That would be false.

3 **MR. COLLIER:** Same objections, and also hearsay.

4 **THE COURT:** Overruled.

5 You can answer.

6 **THE WITNESS:** The reason why that would be false is
7 because it was on the driver's seat and if the individual was
8 sick, why would the poop be on my side of the seat?

9 **BY MR. SPIRO:**

10 **Q.** I'm asking a slightly different question. Then we can get
11 into that.

12 Isn't it true that they told you that in an e-mail?

13 **A.** No.

14 **MR. SPIRO:** I'd offer the e-mail into evidence,
15 Exhibit 410.

16 **MR. COLLIER:** Objection, Your Honor. This wasn't
17 introduced last time.

18 **THE COURT:** Sustained.

19 **MR. SPIRO:** It's impeachment. Your Honor, can I be
20 heard on this?

21 **THE COURT:** Not at this time.

22 **MR. COLLIER:** It also wasn't produced in discovery.

23 **THE COURT:** Okay.

24 **BY MR. SPIRO:**

25 **Q.** Do you recall -- you testified earlier in front of the

1 jury that you recalled e-mailing --

2 **A.** Yes.

3 **Q.** -- Mr. Quintero?

4 **A.** Yes.

5 **Q.** Do you recall the substance of that e-mail?

6 **A.** So the e-mail I sent to Security, Victor and Josue was I
7 would love to know who did this to the cart, and we need to see
8 camera footage because this is not okay.

9 **Q.** And do you recall Victor Quintero's response to you at
10 7:41 a.m.?

11 **A.** I recall the response from Security saying they don't have
12 the angle on the camera.

13 **Q.** I'm not asking you about Security's response. I'm asking
14 do you remember at 7:41 a.m. Mr. Quintero responding to your
15 upset e-mail and telling you what happened? Do you recall
16 that?

17 **MR. COLLIER:** Objection. Hearsay. He is back-dooring
18 the same exhibit.

19 **THE COURT:** The exhibit is not coming in.

20 If you recall, you can say so; if you don't recall, you
21 can say you don't recall.

22 **THE WITNESS:** So I can't recall because my shift ends
23 at 6:00 a.m.

24 **MR. SPIRO:** So can I show this document to the witness
25 to see if his recollection can be refreshed?

WHEELER - CROSS / SPIRO

1 **THE COURT:** No.

2 **THE WITNESS:** So you are saying I got an e-mail at
3 7:41. I got off at 6:00 a.m.

4 **BY MR. SPIRO:**

5 **Q.** Yeah, I wasn't -- I apologize, sir. I wasn't meaning when
6 you got the e-mail. I'm talking about when the e-mail was
7 sent. I'm asking you -- so maybe I should clarify my question.

8 If you had sleep during the day, it's totally
9 understandable. I'm asking when you woke up and you checked
10 your e-mails, isn't it true that you had an e-mail from Victor
11 Quintero telling you that they looked into it and somebody had
12 gotten sick and --

13 **MR. COLLIER:** Objection. Hearsay.

14 **MR. SPIRO:** No, it's not. It's a question.

15 **BY MR. SPIRO:**

16 **Q.** And that the person was sick, and that that's the reason
17 that there had been some feces on the cart?

18 **MR. COLLIER:** Your Honor, you can't just read an
19 exhibit in.

20 **THE COURT:** This question has been asked and answered.
21 The e-mail not produced in discovery is not coming in -- not
22 introduced in a prior proceeding is not coming in. I have
23 allowed you to explore that issue. It's now been explored.
24 You may move on.

25 \\

1 **BY MR. SPIRO:**

2 **Q.** Are you sticking with your account --

3 **MR. COLLIER:** Objection. Argumentative.

4 **BY MR. SPIRO:**

5 **Q.** -- of this incident as being related to an intentional
6 racial act, sir?

7 **THE WITNESS:** Yes. I'm sticking to the truth.

8 **MR. COLLIER:** Objection.

9 **THE COURT:** It's fine.

10 **BY MR. SPIRO:**

11 **Q.** Now, there is another incident that you talked about
12 regarding the N-word being directed at you, sir, that I told
13 you we would talk about?

14 **A.** Yes.

15 **Q.** Okay. And you reported that to Josue Torres, you said;
16 right?

17 **A.** Correct.

18 **Q.** And you know, sir, that there is no e-mail of you
19 reporting at that to Mr. Torres?

20 **A.** Correct.

21 **Q.** And the truth is, sir, that because that individual who
22 called you that name -- he didn't work at Tesla; right? He
23 worked for one of the staffing agencies, as I think you said;
24 right?

25 **A.** Yes.

1 Q. And the truth is that's Wayne Jackson at nextSource's --

2 MR. COLLIER: Objection. This undermines the
3 instructions and findings, Your Honor.

4 THE COURT: Hang on just a second.

5 MR. SPIRO: I will withdraw that question.

6 THE COURT: All right.

7 BY MR. SPIRO:

8 Q. So Wayne Jackson at nextSource was a program manager that
9 dealt with certain complaints and issues between different
10 staffing agencies?

11 MR. COLLIER: Same objection.

12 THE COURT: Overruled as to that.

13 BY MR. SPIRO:

14 Q. Right?

15 A. I do not know Wayne's job. I just know he was part of HR.

16 Q. You understood he was part of HR?

17 A. Yes.

18 Q. Okay. And Mr. Jackson also never got a complaint about
19 that -- that incident in which you say that somebody -- the
20 story you mentioned earlier where somebody directly called you
21 the hard ER word; correct?

22 A. I do not know. My supervisor received a complaint.

23 Q. Right. But I'm asking did ever tell Wayne Jackson that?

24 A. No.

25 Q. Okay. Now, we've talked a little bit about that

1 conversation you had with Mr. Diaz. You had subsequent
2 conversations with him since, you know, the years -- since the
3 years since you've left Tesla; right?

4 **A.** Actually, only two.

5 **Q.** Only two.

6 Well, he sent you a text message saying that if you are
7 interested in jumping on this class action lawsuit or this
8 lawsuit, there is an attorney going around and his name is
9 Lawrence A. Organ from California Civil Rights Law Group.

10 He sent you that text, didn't he?

11 **A.** Probably.

12 **Q.** Okay. And when that text was first shown -- and people
13 became aware of it -- there were dollar bills in the background
14 of that text, weren't there?

15 **A.** No. Please do not mistake my character for money.

16 **Q.** I'm not talking about you, sir. I'm talking about the
17 text message.

18 **A.** No.

19 **Q.** Okay. It's your testimony that in the image of your phone
20 with the text message from Mr. Diaz, the text message is from
21 Mr. Diaz to you saying --

22 **MR. COLLIER:** Mischaracterizes the document.

23 **MR. SPIRO:** I'm sorry?

24 **MR. COLLIER:** It mischaracterizes the document.

25 **THE COURT:** Let him ask his questions, please.

WHEELER - CROSS / SPIRO

1 **MR. SPIRO:** Thank you.

2 **BY MR. SPIRO:**

3 **Q.** I'm asking you. I'm not talking about you, sir. You
4 received a text. Anybody can receive a text. A text came into
5 your phone with the substance I just said, and in the
6 background of it was dollar bills; correct?

7 **A.** I do not recall.

8 **Q.** Okay. I'm going to show --

9 **A.** I have my phone in my pocket. I could try and look for
10 the text.

11 **Q.** I have a picture that I'm going to pass up and show you.
12 See if it refreshes your recollection.

13 **THE COURT:** Have you shown it to the other side?

14 **THE WITNESS:** Oh, you don't have to. That's my phone
15 background for my rent money, if you count it. That's my
16 phone's background. That has nothing to do with Owen.

17 **BY MR. SPIRO:**

18 **Q.** Okay. So the -- I guess I don't have to show, the -- the
19 text messages on the screen, you're saying that the text
20 message with that background, the background is your rent
21 money. The background isn't part of the text; is that fair?

22 **A.** I have that in my photo albums. I can pull that up right
23 now.

24 **Q.** Okay. Well, whatever the -- whatever the reason is -- and
25 I'm not questioning you or making you take out your phone --

WHEELER - CROSS / SPIRO

1 I'm just saying there were dollar bills when you took a picture
2 of the image on the phone; fair?

3 A. Yeah.

4 MR. COLLIER: It's fine.

5 BY MR. SPIRO:

6 Q. Now when you think back to Owen Diaz, you testified a
7 little bit earlier that words in effect that he was -- you
8 know, he was very easy to get along with and whatnot.

9 Do you remember that testimony?

10 A. I do not.

11 Q. You don't remember that testimony?

12 A. I don't.

13 Q. Okay. Because you know, sir, that one of your concerns
14 when you look back at the time at Tesla is that Mr. Diaz was
15 always going around telling on people and getting them fired;
16 isn't that true?

17 A. I know he was, as you stated, direct in his actions.

18 Q. And part of being direct in his actions is he would go
19 around getting your specific employees fired sometimes; right?

20 A. So to my knowledge, the individual that you may be
21 referring to was the one that threatened to shoot him.

22 Q. I'm not actually talking about that individual.

23 A. Oh.

24 Q. I'm saying generally your -- when you look back at your
25 time at Tesla, what you were concerned about was that -- that

1 the guy, Owen, kept getting your workers fired.

2 Do you recall that?

3 **MR. COLLIER:** I'm going to object. Asked and answered
4 and also character evidence.

5 **THE COURT:** That's all right. You can answer.

6 **THE WITNESS:** I do not recall.

7 **MR. SPIRO:** Can I show the witness his deposition
8 testimony at 72:23?

9 **THE COURT:** Sure. Does he have the deposition?

10 **MR. SPIRO:** He does.

11 **BY MR. SPIRO:**

12 **Q.** Actually, given time, let me just say, is it your
13 testimony that you just don't recall one way or another --
14 forget what you said. You don't recall, as you sit here, one
15 way or another whether or not Mr. Diaz got multiple of your
16 employees fired?

17 **A.** I do not recall.

18 **Q.** Okay. Do you recall thinking in your mind years later
19 that the thing that you remember about Owen Diaz is he was
20 always saying stuff about the people that worked under you and
21 getting them fired?

22 **A.** That actually did not cross my mind until just now.

23 **Q.** Okay. Now let's look at it for a second then.

24 72 -- page 72.

25 **THE COURT:** What lines?

WHEELER - CROSS / SPIRO

1 **MR. SPIRO:** 23. Let me just make sure I have the
2 right...

3 **MR. COLLIER:** You said page 72?

4 **THE COURT:** I don't --

5 **MR. SPIRO:** Yeah, I don't --

6 **THE COURT:** This is the wrong --

7 **MR. SPIRO:** This is the wrong version of it.

8 **THE COURT:** Yeah.

9 **BY MR. SPIRO:**

10 **Q.** 73, excuse me. Lines 3 and 4.

11 **MR. COLLIER:** I mean it's incomplete without the
12 question and answer.

13 **MR. SPIRO:** I'm refreshing his memory.

14 **MR. COLLIER:** He is just reading it to himself?

15 **MR. SPIRO:** Yes.

16 **MR. COLLIER:** Okay. No objection.

17 **MR. SPIRO:** Thank you.

18 **THE WITNESS:** Yeah.

19 **BY MR. SPIRO:**

20 **Q.** Does that refresh your recollection that -- that Mr. Diaz
21 was getting your employees fired?

22 **A.** That reminds me that I was upset with Owen because we did
23 not have that good of a relationship.

24 **Q.** And the truth is, sir, that you're very angry, as you've
25 said, about being let go by Tesla, aren't you?

WHEELER - REDIRECT / COLLIER

1 **A.** I'm not angry at all.

2 **Q.** You're not angry?

3 **A.** I'm hurt.

4 **Q.** Have you testified previously that you were very angry?

5 **A.** I remember if I were to have said anything, I would say
6 something to the caliber that that night I went to sleep
7 enraged and I woke up enraged, and I went to Tesla and I asked
8 them to give me a reason for my termination because at least
9 that way I could work through something because I can't work
10 through being a good employee.

11 **Q.** Okay. Just one last thing. At a certain point in time
12 later, you applied to work at Tesla again; true?

13 **A.** I did come back to work at Tesla, but I requested to be at
14 an off-site far away from the main factory.

15 **MR. SPIRO:** No further questions. Thank you.

16 **THE COURT:** All right. Any redirect?

17 **MR. COLLIER:** Thank you, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. COLLIER:**

20 **Q.** Mr. Wheeler, you mentioned that you believed Mr. Martinez
21 was covering for someone else on the drawing?

22 **A.** Yes.

23 **Q.** And what led you to believe that?

24 **A.** Just my -- I had a hard time -- I know -- well, I know
25 other people work inside of the room that bale came from, and

WHEELER - REDIRECT / COLLIER

1 it seemed like a more immature thing to be done.

2 **Q.** Now, you're aware that he has now admitted to drawing it?

3 **A.** I am aware.

4 **Q.** And testified under oath that he drew it?

5 **A.** Yes.

6 **Q.** Do you still believe that he didn't draw it?

7 **A.** I haven't given it much thought either way.

8 **Q.** You were asked whether your incident being called the
9 N-word was ever put in an e-mail.

10 Do you recall that?

11 **A.** I do.

12 **Q.** Can we agree that sometimes things happen that aren't in
13 e-mails?

14 **A.** Yes.

15 **MR. COLLIER:** No further questions.

16 **THE COURT:** All right. Mr. Wheeler, thank you. You
17 are excused.

18 **MR. ALEXANDER:** Your Honor, the next witness would be
19 Wayne Jackson.

20 **THE COURT:** Mr. Jackson, come on up.

21 **THE CLERK:** If you will step up and remain standing,
22 I'm going to take your picture. Raise your right hand, please.

23 **WAYNE JACKSON,**

24 called as a witness for the Plaintiff, having been duly sworn,
25 testified as follows:

JACKSON - DIRECT / ALEXANDER

1 **THE CLERK:** Please be seated. And if you would begin
2 by stating your full name and spelling it for the court
3 reporter.

4 **THE WITNESS:** Wayne Jackson, W-A-Y-N-E, J-A-C-K-S-O-N.

5 **MR. ALEXANDER:** Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY MR. ALEXANDER:**

8 **Q.** Good morning, Mr. Jackson.

9 Can you tell me, where did you attend high school?

10 **A.** Skyline High School in Oakland.

11 **Q.** And you attended college?

12 **A.** Yes. Arizona.

13 **Q.** And you were in the military?

14 **A.** Yes. Marine Corps.

15 **Q.** And you graduate -- I'm sorry. And you received an
16 honorable discharge?

17 **A.** Yes, sir.

18 **Q.** When you were discharged, what level were you at?

19 **A.** E-4 corporal.

20 **Q.** And for the record, what is your -- for the record what is
21 your race?

22 **A.** African American.

23 **Q.** When were you last employed at inside the Tesla factory?

24 **A.** Back in 2015, I think it was. Somewhere around there.

25 I'm not sure of the dates.

JACKSON - DIRECT / ALEXANDER

1 Q. And at that time what title did you hold?

2 A. Program manager.

3 Q. I want to talk about the N-word inside of the workplace.

4 Did the N-word occur inside the workplace during the timeframe
5 that you were there?

6 A. Yes. Rampant.

7 Q. Rampant?

8 A. Yes.

9 Q. And so some people might understand "rampant," on a daily
10 basis?

11 A. Every day.

12 Q. More than once a day?

13 A. More than several times a day.

14 Q. So it was -- "rampant" means every day constantly?

15 A. Yes, sir.

16 Q. Thank you.

17 And with regard to use of the N-word, did you ever hear
18 the word "mayate" used?

19 A. Not on a regular in the plant, no.

20 Q. But sometimes?

21 A. Yeah. I've heard it before.

22 Q. Do you recall any individual specifically you heard it
23 from?

24 A. It would usually be kind of a lot of the Hispanic males
25 would use those terms.

JACKSON - DIRECT / ALEXANDER

1 Q. Specifically, with regard to Mr. Martinez, Ramon Martinez,
2 are you familiar with him?

3 A. Yes.

4 Q. And did you hear him use that word?

5 A. Yes. I've heard him use it before.

6 Q. Once or more than once?

7 A. Probably once or twice.

8 Q. Your role as a project manager, can you tell me what your
9 role was, what you did?

10 A. Kind of the middle man between Tesla and some staffing
11 agencies.

12 Q. So if I understand correctly, there were a number of
13 staffing agencies that brought people inside of the Tesla
14 workplace?

15 A. Yes, sir.

16 Q. And you were the person essentially responsible for
17 supervising those staffing companies?

18 A. For the most part, the individuals that were on-site
19 making sure they were getting to work on time, things like
20 that.

21 Q. So you were the liaison between Tesla and these staffing
22 companies?

23 A. Yes, sir.

24 Q. But all the staffing companies were actually employed by
25 Tesla?

1 **A.** Yes.

2 **MR. GRIFFIN:** Objection. Speculation.

3 **THE COURT:** Overruled.

4 **BY MR. ALEXANDER:**

5 **Q.** And so as I understand it, these staffing companies hired
6 the employees that worked inside the factory?

7 **A.** Yes, sir.

8 **Q.** And the staffing companies work inside of the factory --
9 I'm sorry. These employees from the staffing companies working
10 inside the factory you were supervising?

11 **A.** Yes, sir.

12 **Q.** And you reported to Tesla individuals?

13 **A.** Yes, sir. Well, I reported to nextSource and to Tesla, to
14 both.

15 **Q.** When you heard the N-word, did you find it offensive?

16 **A.** Extremely.

17 **Q.** And did it matter whether it was the A version or the
18 R version?

19 **A.** It really didn't matter. It shouldn't be said, period.
20 But I mean, it's -- for me, it's offensive. For others, it may
21 not be, especially people of other races that aren't African
22 American or Black. They don't know how derogatory the
23 statement can be. In Tesla you have little Asian kids calling
24 each other "nigga." You have Hispanics calling each other
25 "nigga." They use it in derogatory and in brotherly, I guess

1 you could say, terms. But it's very derogatory. It's very
2 offensive.

3 Q. Based on your understanding, do you have human resource
4 experience?

5 A. Yes, sir. I've done human resources for 20 years.

6 Q. Okay. And based on your training. Based on your
7 experience with regard to human resources, is the N-word -- I'm
8 sorry.

9 Is it your understanding that an employer is supposed to
10 maintain a workplace free of harassment?

11 A. Yes, sir.

12 Q. And in your training, is the N-word one thing that should
13 not occur inside the workplace?

14 A. Not occur inside the workplace. It's not acceptable.

15 Q. So if you knew that that was not supposed to occur inside
16 the workplace and you were offended by the word, why didn't you
17 do something about it?

18 A. There was nothing I could do, sir.

19 Q. And why is that?

20 A. Because Tesla allowed it. They didn't stop it. I
21 couldn't talk to Tesla employees and tell them what to or not
22 to do.

23 Q. So the way the workplace was constructed, you were a
24 liaison, but you didn't have any power to stop the N-word in
25 the workplace?

JACKSON - DIRECT / ALEXANDER

1 **MR. GRIFFIN:** Objection. Leading.

2 **THE WITNESS:** Not with Tesla employees, no, I could
3 not.

4 **THE COURT:** Overruled as to that.

5 **THE WITNESS:** I could talk to anybody that was under
6 the nextSource umbrella and tell them that it was
7 inappropriate, but Tesla employees I couldn't.

8 **BY MR. ALEXANDER:**

9 **Q.** I want to talk about an elevator incident so that you
10 understand the framework.

11 **MR. ALEXANDER:** If we could show Exhibit Number 92,
12 please.

13 **BY MR. ALEXANDER:**

14 **Q.** Mr. Walker, I believe that you became aware of an incident
15 involving Owen Diaz and Mr. Martinez. This is an October 20,
16 2015, e-mail from Owen Diaz to you.

17 Do you see that?

18 **A.** Yes, sir.

19 **Q.** And then -- I'm sorry.

20 **A.** This is actually to Ed Romero.

21 **Q.** Exactly. I'm sorry. Excuse me.

22 Owen Diaz to Ed Romero. And then above that, it says --
23 above that at the top, it says Owen Diaz to Wayne Jackson.

24 Do you see that?

25 **A.** Uh-huh.

1 Q. Yes?

2 A. Yes.

3 Q. Thank you.

4 At this point Mr. Diaz -- I'm sorry. With regard to
5 the -- with regard to the workplace, there are cameras inside
6 the workplace at Tesla; correct?

7 A. Yes, sir.

8 Q. And throughout the entire workplace; right?

9 A. Yes, sir.

10 Q. Including the elevators; isn't that correct?

11 A. Not necessarily inside the elevators, but I believe in
12 those areas where the elevators open.

13 Q. In conducting an investigation about an incident, one of
14 the things that you would want to do is to be able to access
15 the video associated with an incident; correct?

16 A. Yes, sir.

17 Q. Now, did you have direct access to video?

18 A. No, sir. I would have to go to Tesla.

19 Q. So in order for you to review video of any incident, you
20 had to have Tesla give you access?

21 A. Yes, sir.

22 Q. Even though you were the person responsible for
23 supervising the subcontractors inside the workplace; correct?

24 A. But I did not have access to their camera system.

25 Q. And, sir, in order to get access, you had to speak to

1 Tesla personnel?

2 A. Yes, sir.

3 Q. And do you know who had -- who specifically had access or
4 who would provide you access?

5 A. That would be Victor Quintero or Ed Romero would be who I
6 would usually go to.

7 Q. Is a fight between employees considered a serious
8 incident?

9 A. Yes, it is.

10 Q. With regard to the incident that's identified in
11 Exhibit 92, confrontation between Mr. Diaz and Ramon Martinez,
12 did you report that incident up the line to people at Tesla?

13 A. I had to. Just about anything that comes through I have
14 to send to either their agency and/or Tesla HR. If I didn't
15 send it, my manager at the time was Terri Garrett. I would
16 make sure she was informed because she had the direct
17 relationship with Tesla's HR.

18 Q. Now, with regard to this incident, based on the
19 information you received, it was your understanding that Owen
20 Diaz was inside an elevator with Rothaj Foster at the point
21 when this incident occurred?

22 A. Yes, sir.

23 Q. And it was your understanding that Mr. Ramon Martinez had
24 rushed into the elevator toward Mr. Diaz?

25 A. He was on a golf cart, I believe. They have little carts

1 that you drive around.

2 Q. When you say "he," you are referring to who?

3 A. Mr. Martinez was driving around on the cart as a lead. He
4 would have a cart to get around the factory because it was so
5 big, and I believe he jumped off that cart, you know, and
6 approached Mr. Diaz in the elevator.

7 (Pause in proceedings.)

8 BY MR. ALEXANDER:

9 Q. I would like you, please, to review Exhibit 103.

10 Exhibit 103 at the bottom of the page, October 19, 2017,
11 at 2:17 p.m.: "Wayne did you receive this from me on Friday."

12 And then you go up above and the middle of that e-mail has
13 a reference Wayne Jackson to Terri Garrett October 19: "Yes.
14 I'm actually on the phone now dealing with the Owen and Ramon
15 issues. This issue seems to be related to this, and we really
16 are going to have to do some in depth investigation. I'll give
17 you a call in a few minutes to discuss."

18 When you used the term "in depth investigation," you had
19 individuals involved in the incident, three. Did that
20 investigation mean interviewing those individuals?

21 A. Yes, sir.

22 Q. So that would have meant interviewing Owen Diaz, the
23 person who was supposedly attacked; right?

24 A. Yes, sir.

25 Q. And it would mean interviewing the attacker, Ramon

1 Martinez?

2 A. Yes, sir.

3 Q. It would mean interviewing the witness, Rothaj Foster;
4 correct?

5 A. I don't recall if I was able to interview Rothaj. I'm not
6 sure which company he was with. I don't think he was under our
7 umbrella, if I remember correctly.

8 Q. So just to get it straight, it sounds like you did
9 interview Owen Diaz?

10 A. Yes, sir.

11 Q. And you did interview the attacker, Ramon Martinez?

12 A. Yes, sir.

13 Q. You were not able to interview the eyewitness, Rothaj
14 Foster?

15 MR. GRIFFIN: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, sir, I was not -- I don't believe I
18 was able to interview Mr. Foster. I think I started the
19 interview with Mr. Foster and that's when I found out he wasn't
20 under the nextSource umbrella.

21 BY MR. ALEXANDER:

22 Q. And so when you had circumstance where you were trying to
23 do an investigation and you didn't have access to an important
24 witness like Rothaj Foster, what did you do?

25 A. There was nothing I could do in that point other than make

1 sure that both the individuals knew that fighting on the
2 premises is unacceptable. You know, Mr. Diaz was upset because
3 he said Mr. Martinez was really aggressive, threatening, name
4 calling, things of that nature.

5 To be honest, Mr. Diaz had some run-ins with some people
6 himself as an elevator operator, but it was more -- how do you
7 put it? -- attitude as opposed to racially motivated.

8 **Q.** So there were other instances where Mr. Diaz had run-ins
9 with people associated with the elevator; right?

10 **A.** Yes, sir.

11 **Q.** And in those incidents, did Mr. Diaz ever play the race
12 card and say it was racial?

13 **A.** No, sir, he didn't until that particular incident -- well,
14 until that particular incident happened, no.

15 **Q.** All right. And so when you say "that particular
16 incident," the incident with the elevator was the first time
17 there was any reference to race?

18 **A.** Yes, sir.

19 **MR. GRIFFIN:** Objection. Misstates testimony.

20 **THE COURT:** Overruled.

21 **BY MR. ALEXANDER:**

22 **Q.** So just to be clear, Owen, as an elevator operator, was
23 dealing with lots of people that needed to have equipment go up
24 and down; right?

25 **A.** Yes, sir.

1 Q. And so in the stress of those circumstances, there were
2 times when there would be discussions that were disagreements;
3 correct?

4 A. The elevator seemed to have a lot of issues. They were
5 bottleneck for the organization, for Tesla. They would get
6 damaged, wouldn't work a lot of times, very slow in getting
7 product up and down. And I think that was where the bottleneck
8 and that's where a lot of the -- I don't know if you want to
9 call it anger or hostility or anything came, but it was because
10 things weren't getting moved around the plant in a timely
11 manner.

12 Q. And so going back to Exhibit Number 103, at the top -- at
13 the top, it has a reference to: "Thank you. We actually need
14 to get their statements."

15 So there was an intention as of October 20 to get
16 statements of all the witnesses associated with this incident;
17 right?

18 A. Yes, sir.

19 Q. And so with regard to Rothaj Foster, because you weren't
20 provided access to him, you didn't get a statement from him;
21 correct?

22 A. Not that I recall, no, sir.

23 Q. And did anyone from Tesla get a statement from him and
24 provide it to you so that you would have a full and complete
25 investigation?

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1 **MR. GRIFFIN:** Objection. Calls for speculation.

2 **THE COURT:** No, it doesn't. It's overruled.

3 **THE WITNESS:** I never was contacted with regards to
4 Tesla as far as what they did or were going to do.

5 **BY MR. ALEXANDER:**

6 **Q.** So with regard to Mr. Foster, no statement was ever
7 provided to you; correct?

8 **A.** No, sir, not that I recall.

9 **Q.** Thank you.

10 **MR. ALEXANDER:** If we can turn, please, to Exhibit
11 Number 31.

12 **BY MR. ALEXANDER:**

13 **Q.** This is an e-mail from -- a series of e-mails from
14 October 20, 2015.

15 **MR. ALEXANDER:** Can we go to the bottom of the -- I'm
16 sorry. If we would go to the second page, 31-2, and there's an
17 e-mail from 11:20 a.m. from Wayne Jackson to Terri Garrett.

18 **BY MR. ALEXANDER**

19 **Q.** Do you see that, Mr. Jackson?

20 **A.** Uh-huh.

21 **Q.** "Yes"?

22 **A.** Yes.

23 **Q.** "Here is Ramon's statement. I'm waiting for Rothaj and
24 Ramon to send me theirs."

25 When it says: "Here is Ramon's statement," that should

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1 actually be Owen's statement; isn't that correct?

2 **A.** Yes. I'm sorry. You're correct.

3 **Q.** Thank you.

4 I'm waiting Rothaj and Ramon to send me theirs. Ed has a
5 meeting scheduled with them Wednesday at 6:00 p.m., and I will
6 be attending with them."

7 Do you see that reference?

8 **A.** Yes, sir.

9 **Q.** And then above that, at 11:56, Ms. Garret responds to you:
10 "Why is Ed meeting with them?" Do you see that?

11 **A.** Yes, sir.

12 **Q.** And then above that, at 12:30, you respond: "He was
13 instructed by Victor." That's Victor Quintero; correct?

14 **A.** Victor was Ed's direct manager.

15 **Q.** Thank you.

16 And then above, at 7:41 p.m., there's a reference --

17 **A.** I think I'm on a different slide now or something.

18 **Q.** It's coming.

19 **A.** Okay.

20 **Q.** There's a reference that says: "Erin, can I ask your help
21 on the e-mail chain below. It looks like Victor is asking Ed
22 Romero to get involved in a temporary worker ER issue?"

23 **THE COURT:** Page 1 needs to be put on the screen so
24 that people can follow along.

25 **MS. GRISLIS:** I think there's a bit of a delay between

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1 the iPad I'm using and...

2 **MR. ALEXANDER:** Yes. If we could go to the top of
3 page 1 For some reason we're having difficulty getting that
4 page.

5 **THE COURT:** There you go. You got it now.

6 **MR. ALEXANDER:** Thank you.

7 **BY MR. ALEXANDER:**

8 **Q.** So 7:41 p.m., from your supervisor, Ms. Garret: "Erin,
9 can I ask for your help on e-mail chain below? It looks like
10 Victor is asking Ed Romero to get involved in a temporary
11 worker ER issue" -- employer issue -- "my recommendation is
12 that Ed not be involved. Can you help me sort this out? Two
13 of the three workers have already been interviewed. Please
14 advise."

15 Erin Marconi, can you indicate -- can you tell me who that
16 person is?

17 **A.** I believe she's with Tesla HR or management. I'm not sure
18 of her exact role. Like I said, Terri Garrett mainly
19 interfaced with them.

20 **MR. ALEXANDER:** And now, if you would turn to Exhibit
21 Number 76.

22 (Pause in proceedings.)

23 **BY MR. ALEXANDER:**

24 **Q.** At the bottom of the e-mail, we have your statement from
25 an earlier e-mail: "We are really going to have to do some in

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1 depth investigation." Do you see that?

2 A. Yes.

3 Q. And then if you go above that, your boss, Terri Garrett,
4 to you at October 21 at 10:47: "Confirming via this e-mail
5 that we agree we do not need to do any formal investigation
6 with Ramon, Owen, and Rothaj."

7 Do you see that?

8 A. Yes, I do.

9 Q. So before you could complete your investigation, your boss
10 told you stop the investigation?

11 A. Yes, sir.

12 Q. And then if we can go up. At the top of this e-mail, at
13 10:49 p.m., from you to your boss: "Yes. I have spoken with
14 all three and will be speaking with Ramon and Owen again on
15 Friday. I had a conversation with Ed" --

16 That's Ed Romero?

17 A. Yes, sir.

18 Q. -- "at Victor" --

19 That's Victor Quintero?

20 A. Yes, sir.

21 Q. "I had a conversation with Ed at Victor's desk yesterday
22 and they just want us to verbally counsel each of them with
23 regards to appropriate behavior in the workplace. No written
24 warning needed right now."

25 A. Yes, sir.

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1 **Q.** So this refers to "yesterday." Before you had this e-mail
2 with Ms. Garret saying: "We agree, we do not need to do a
3 formal investigation," before that happened, you had a
4 conversation with Ed Romero and Victor Quintero where they told
5 you let's stop the investigation, just do a verbal warning;
6 right?

7 **A.** Yes, sir.

8 **Q.** So in the absence of that instruction, you would have
9 finished your thorough good-faith investigation; correct?

10 **MR. GRIFFIN:** Objection. Leading.

11 **THE COURT:** Yeah. Sustained.

12 **BY MR. ALEXANDER:**

13 **Q.** So stopping the investigation was not your decision;
14 correct?

15 **A.** No, sir, it was not.

16 **Q.** And with regard to the extent that you can conduct an
17 investigation, you did not have unlimited authority -- just a
18 second.

19 (Pause in proceedings.)

20 **THE WITNESS:** I had very limited authority.

21 (Pause in proceedings.)

22 **BY MR. ALEXANDER:**

23 **Q.** In terms of the way you conducted your investigation, you
24 had limited choices as to what you could do; correct?

25 **A.** Yes, sir.

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1 Q. So you weren't in control of the investigation, others
2 were in control of the investigation; is that correct?

3 MR. GRIFFIN: Objection. Leading.

4 THE COURT: Sustained.

5 Ask a direct question.

6 BY MR. ALEXANDER:

7 Q. With regard to the investigation, what control did you
8 have?

9 A. Very little, sir. I had to go to others to get any
10 information. Whether it was looking at video cameras, to get
11 statements, things of that nature, I had to get approval,
12 essentially.

13 MR. ALEXANDER: Let's turn to Exhibit Number 33.

14 (Pause in proceedings.)

15 BY MR. ALEXANDER:

16 Q. This is the report with regard to the jigaboo that was
17 left in the workplace.

18 MR. ALEXANDER: Can we show 33-2?

19 BY MR. ALEXANDER:

20 Q. Do you recall -- do you recall this photograph?

21 A. Yes, sir.

22 Q. With regard to this incident, how did you just -- how did
23 you first become aware of the incident?

24 A. I don't recall if it was Ed or who notified me. I'm not
25 sure exactly who notified me.

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1 Q. But did you begin to conduct an investigation associated
2 with the incident?

3 A. Yes, sir. I went and took pictures, things of that
4 nature, immediately.

5 Q. Did you have any conversation with Owen Diaz about the
6 incident?

7 A. I believe I did, yes, because he was pretty upset.

8 Q. Okay. Now when you saw this, what was your reaction to
9 it?

10 A. It's bullshit.

11 Q. And why --

12 A. It's offensive.

13 Q. Go ahead.

14 A. It's offensive. It's not a joke. And that's what Ramon
15 kept saying, "I was joking." And I kept expressing to him how
16 could you possibly feel that was a joke? How could you
17 possibly feel that would be funny?

18 Q. And as a result of -- I'm sorry.

19 So you told us your reaction to it. Tell us, when you
20 spoke to Mr. Diaz, what was his reaction?

21 A. He was extremely offended by it.

22 Q. How could you tell?

23 A. He was angry. He expressed that he was offended, and he
24 felt that he was being racially targeted.

25 Q. Now, you spoke to Mr. Diaz about the incident?

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1 **A.** Yes, sir.

2 **Q.** You spoke to Mr. Ramon Martinez about the incident?

3 **A.** Yes, sir.

4 **Q.** And then it was your -- did you have the ability at that
5 point to take any disciplinary action with regard to the
6 conduct of Mr. Martinez?

7 **A.** I was not able to discipline anyone, sir. They were not
8 my direct employees. I could make a recommendation, and if
9 they decided not to take my recommendation, there wasn't much
10 else I could do.

11 **Q.** With regard to --

12 **A.** My first recommendation after seeing this was Ramon
13 Martinez did not need to be on-site anymore.

14 **Q.** And so he should be terminated from the Tesla site?

15 **A.** I don't know if they want to terminate him, but he should
16 not be on that site anymore.

17 **Q.** And who did you make that recommendation to?

18 **A.** Chartwell or Manpower. I can't remember which agency he
19 worked for. I told Tesla that, told Victor and Ed that yeah,
20 he should not be here anymore.

21 **Q.** So you had a conversation with Victor Quintero where you
22 said he should not be -- he should not be allowed to stay on
23 the premises; correct?

24 **A.** Yes, sir.

25 And they wanted to keep Mr. Martinez working, but I told

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1 them there had to be some type of disciplinary action
2 associated this. This just -- that's unacceptable.

3 **Q.** Let me show you Exhibit Number 274.

4 (Pause in proceedings.)

5 **BY MR. ALEXANDER:**

6 **Q.** First, you had a conversation with Mr. Quintero. When you
7 spoke to Mr. Quintero, what recommendation did you make to
8 Mr. Quintero?

9 **A.** That he should probably get a final written warning at the
10 very least and, you know, he should probably -- he shouldn't be
11 on-site. That was my whole recommendation was he really
12 shouldn't be on-site.

13 **Q.** And did you use the term "He should be fired"?

14 **A.** I don't know if I used that particular word because I
15 couldn't fire him per se. I could send him back to his agency,
16 and they could do their own investigation and determine if they
17 were going to keep him employed or not, but I couldn't make
18 that determination.

19 **Q.** And so when you told Mr. Quintero that he should be taken
20 off the property, did Mr. Quintero agree?

21 **A.** No, he did not.

22 **Q.** And what was Mr. Quintero's response?

23 **A.** To be quite honest, if I remember correctly, they had
24 recently promoted Ramon to a lead. They felt Ramon was a good
25 worker, good guy. And they really didn't want to do much.

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1 Q. And so did Mr. Quintero indicate that he just wanted to
2 give a verbal warning?

3 A. Yes.

4 Q. And what was your response to Mr. Quintero saying a verbal
5 warning was sufficient?

6 A. Essentially, that wasn't sufficient. That was a mistake.

7 Q. And did you have further conversation to try to convince
8 him otherwise?

9 A. Yes. I believe so.

10 Q. And did it take a lot of convincing?

11 A. Yeah. It took a few conversations for him to understand
12 the severity of the situation.

13 Q. And so ultimately, what did he agree to?

14 A. I believe it was a three- or five-day suspension.

15 And I also even told Victor, "You probably -- even before
16 bringing him back, you might want" -- and like I said, I can't
17 remember if it was Manpower, Chartwell. We dealt with several
18 different agencies. But there should have been some type of
19 training, some type of sensitivity training. Something should
20 have been conducted. Once again, it wasn't my place, so I
21 don't know if they did or did not do that.

22 MR. ALEXANDER: Let's show, please, Exhibit
23 Number 272.

24 (Pause in proceedings.)

25 \\\

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1 **BY MR. ALEXANDER:**

2 **Q.** Here in the middle of the page January 22, 2016. First,
3 on Exhibit Number 33, the note from Owen is on January 22,
4 2016, at 8:42 a.m. And then this is an e-mail from Victor
5 Quintero on January 22, at 10:20 a.m., so less than two hours
6 after you receive Owen Diaz's e-mail notifying you of the
7 event.

8 Do you see that?

9 **A.** Yes.

10 **Q.** So two hours later, from Victor Quintero to Wayne Jackson.
11 "Wayne, as we discussed in person, this is very disappointing,
12 especially coming from one of our team supervisors. I agree
13 with the recommendation to suspend and issue a permanent
14 written warning."

15 That recommendation to suspend, that was after he refused
16 to accept your recommendation to kick him out off the property
17 correct?

18 **MR. GRIFFIN:** Objection. Leading.

19 **THE COURT:** Overruled. That fact has been
20 established.

21 **THE WITNESS:** Yes, sir.

22 **BY MR. ALEXANDER:**

23 **Q.** And it says: "Also, the apology from Ramon was a good
24 starting point." Did Ramon Martinez ever apologize in your
25 presence?

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1 **A.** He actually apologized to me saying he was sorry, that he
2 thought it was just a joke. Once again, that's when I told him
3 it wasn't funny; it wasn't a joke.

4 I don't recall if he actually met with Owen or not. That,
5 I do not recall, if he actually physically met with Owen and
6 apologized.

7 **Q.** As you sit here today, you don't have any recollection of
8 that happening? You don't know of it happening?

9 **A.** I don't know if that occurred, sir. I don't recall that.

10 I know, like I said, Ramon did apologize to me because I
11 told him as a Black man, I was highly offended.

12 **Q.** And it says at the bottom: "One additional request would
13 be if there is an opportunity to provide some type of diversity
14 training" --

15 **A.** Uh-huh.

16 **Q.** -- "for Ramon."

17 **A.** That's because I told Victor there needed to be some type
18 of sensitivity training when we first talked.

19 **Q.** And did you ever receive information that Ramon received
20 that sensitivity training?

21 **A.** Not that I recall, no.

22 **Q.** Now, with regard to --

23 **A.** He couldn't have received it in three- or five-day period.
24 I don't think that would have occurred.

25 **Q.** Now, with regard to this incident, was there ever any

1 training that occurred throughout the factory to tell people
2 this isn't appropriate?

3 **A.** No, sir. I do not recall Tesla ever providing any type of
4 training. They may have provided something to their staff that
5 I wasn't aware of, but I don't recall any other training.

6 **Q.** With regard to the subcontractors that worked at Tesla for
7 Tesla, they received safety training; right?

8 **A.** Yes. We had to show them a safety video, and there was an
9 onboarding-type packet with confidentiality and
10 nondisclosure-type things that were provided by Tesla to have
11 them sign.

12 **Q.** So confidentiality and safety?

13 **A.** Yes.

14 **Q.** Was there a handbook provided from Tesla about its
15 policies?

16 **A.** No, sir.

17 **Q.** Was there anything provided from Tesla about it providing
18 a workplace free of discrimination?

19 **A.** Not that I can recall.

20 **Q.** Anything telling employees the protections that Tesla
21 would give them in terms of maintaining a workplace free of
22 racial harassment?

23 **A.** No, sir.

24 **MR. ALEXANDER:** Nothing further.

25 **THE COURT:** All right.

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(Pause in proceedings.)

BY MR. ALEXANDER:

Q. Do employees -- sometime when the N-word is used, that can cause confrontations; correct?

A. Yes, sir. Definitely.

Q. And the use of the N-word throughout the factory with African American's presence, can that cause fights?

A. Yes, sir. It did.

Q. So in terms of it being a safety issue, stopping the N-word from occurring inside the workplace would also be a safety issue?

A. Yes, sir. I mean, I don't see why it wouldn't. I mean, you are going to have -- if you look at the -- I don't know what Tesla is doing now. I cannot speak to that. But I mean, just in recent months, not even a year ago, a gentleman was killed in the Tesla parking lot over an argument.

MR. GRIFFIN: Objection.

THE COURT: Sustained and the statement will be stricken.

THE WITNESS: So I mean, what I'm saying is it does cause issues.

MR. GRIFFIN: Objection, Your Honor.

BY MR. ALEXANDER:

Q. So with regard to use of the N-word inside the workplace, what is your -- what is your --

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1 **A.** It has caused confrontations in the workplace.

2 **MR. ALEXANDER:** Thank you.

3 **THE COURT:** Cross-examination.

4 **CROSS-EXAMINATION**

5 **BY MR. GRIFFIN:**

6 **Q.** Good morning, Mr. Jackson.

7 **A.** Good morning.

8 **Q.** One of the first questions that Plaintiff counsel asked
9 you was about whether you heard the word "mayate" in the
10 factory; correct?

11 **A.** Yes, sir. I have heard that before. I have heard that
12 word before, yes.

13 **Q.** Okay.

14 **A.** I don't even know what it means totally, to be honest.
15 I'm not Hispanic. I don't speak Spanish, but I know it's
16 supposed to be like a mother- -- excuse the French --
17 motherfucker or something to that effect.

18 **Q.** Okay. And you recall testifying in a prior proceeding in
19 this matter?

20 **A.** Yes, sir.

21 **Q.** Okay. And if you can go to the binders in front of you to
22 your trial testimony at page 294.

23 (Pause in proceedings.)

24 **THE WITNESS:** 294?

25 **MR. GRIFFIN:** 294, lines 15 to 17.

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1 If it helps, Your Honor, can I approach? I have a binder
2 with his testimony in it.

3 **THE COURT:** Okay. That would be helpful because I
4 think it's not in the trial testimony of what I've got.

5 (Pause in proceedings.)

6 **THE WITNESS:** So is it this binder? That's my
7 question. I'm trying to make sure I'm in the correct binder.

8 **THE COURT:** Your guess is as good as mine.

9 (Pause in proceedings.)

10 **MR. GRIFFIN:** Sorry, Your Honor, for the confusion.
11 This binder has both of your trial testimony in it.

12 **THE COURT:** Do you have a copy for me?

13 **MR. GRIFFIN:** Don't you have your own copy of the
14 testimony?

15 **MR. ALEXANDER:** I didn't ask. That was the Court.

16 **MR. GRIFFIN:** Oh, sorry.

17 **THE WITNESS:** You said page 294?

18 **MR. GRIFFIN:** 294, lines 14.

19 **THE WITNESS:** I do not see a 294. Okay. Here we go.
20 271.

21 (Pause in proceedings.)

22 **BY MR. GRIFFIN:**

23 **Q.** 294, line 15 to 17. Do you see that testimony,
24 Mr. Jackson?

25 **A.** Yes, I do.

1 Q. And weren't you asked in a prior proceeding: "With
2 regards to Ramon Martinez, did you ever hear him use the word
3 'mayate'?"

4 And your response was: "I don't even know what that word
5 is."

6 A. And as I just said a few minutes ago, I don't know what
7 that word is. I was very clear with you.

8 Q. Okay. That was your testimony when I asked about Ramon
9 Martinez at a prior proceeding.

10 A. Yes, sir.

11 Q. "With regard to Ramon Martinez, did you ever hear him use
12 that word?"

13 And your response was, I don't even know what that word
14 is; correct?

15 A. Yes, sir.

16 Q. Now, we've heard about your role at nextSource. You
17 worked a factory in Fremont in 2015 and 2016; correct?

18 A. Yes, sir.

19 Q. And during that time you had two roles: one as a
20 recruiter and then as a liaison or program manager; correct?

21 A. Yes, sir.

22 Q. And in that first role as a recruiter, your job was to
23 identify folks and have them come into the factory; correct?

24 A. Yes, sir.

25 Q. And you did that job for about a year?

1 **A.** Yes, sir.

2 **Q.** You brought hundreds of people into the factory; correct?

3 **A.** True.

4 **Q.** Okay. And then your other role as a liaison or program
5 manager, one of the roles, one of your jobs in that role was
6 information gathering; correct?

7 **A.** Yes, sir.

8 **Q.** If there was a complaint of racial harassment or any type
9 of discrimination or any complaint at all, your job was to
10 gather information related to those complaints; right?

11 **A.** I would gather it and give it to my boss, Terri Garrett,
12 or whoever was appropriate.

13 **Q.** And then part of your job as program manager was to alert
14 Terri Garrett, your boss at nextSource; right?

15 **A.** Yes, sir.

16 **Q.** The staffing agency if a contractor was involved; correct?

17 **A.** Yes, sir.

18 **Q.** And Tesla; correct?

19 **A.** Yes, sir.

20 **Q.** And when you conducted your investigations, your job was
21 to be prompt, objective, and thorough; correct?

22 **A.** Yes, sir. Get the statements from the individuals so that
23 it was their words, not mine. I wanted it exactly what they
24 said. That's what I would get.

25 **Q.** And you took that job seriously; right?

1 A. Yes, sir.

2 Q. Because you knew you were dealing with people's jobs;
3 right?

4 A. Yes, sir.

5 Q. And you wanted to make sure that any discipline that you
6 were going to recommend was consistent with the facts that you
7 gathered; right?

8 A. Yes, sir.

9 Q. Okay. But you don't always get investigations right over
10 the course of your 20 year career; right?

11 A. I wouldn't say I don't get them right, but I say that you
12 might not get all the information.

13 Q. Okay.

14 A. Or you might not be allowed to do a full investigation.
15 You can't say it's right or wrong. You have to just get the
16 facts, and each person has their own facts. So you write those
17 facts down. You get those statements, and you present those.

18 Q. Hindsight is 20/20 looking back on investigations you may
19 have conducted in your career; right?

20 A. Uh-huh.

21 Q. And luckily, in this instance, when you were at the Tesla
22 factory as a liaison, you only had to investigate one incident
23 of racial harassment of an African American; correct?

24 A. I was probably only involved to investigate one. I had
25 seen other incidents at the factory of racially motivated

1 events, but they weren't my employees, so I couldn't say
2 anything. I couldn't do anything.

3 Q. Okay. Your job at the Tesla factory was the liaison
4 between the contractors and Tesla; correct?

5 A. Correct.

6 Q. And there were thousands of contractors that nextSource
7 brought in and had a relationship at the factory; right?

8 A. At one time or over time?

9 Q. So nextSource had a relationship with Citistaff; correct?

10 A. Yes, sir.

11 Q. NextSource had a relationship with Chartwell; correct?

12 A. Yes, sir.

13 Q. NextSource had a relationship with West Valley; correct?

14 A. Yes, sir.

15 Q. And each of those entities had thousands of workers that
16 they brought into the factory over the course of time; correct?

17 A. Yes, sir.

18 Q. And your job was to be a liaison between those folks and
19 nextSource; right?

20 A. Between nextSource, the agencies, and Tesla.

21 Q. Okay. And you would be involved with complaints that
22 those folks had in the resolution of the complaints and the
23 contractors in the factory; right?

24 A. Not necessarily the resolution. I would be involved in
25 them but, I didn't have the authority to resolve them.

1 Q. Okay. And during the entire time that you were a program
2 manager at nextSource, you were only involved with the
3 investigation of one complaint of racial harassment against an
4 African American?

5 MR. ALEXANDER: Objection. Asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was only involved in that complaint,
8 yes. Did I know of other complaints? Did I know of other
9 issues? Did I know of other confrontations that occurred?
10 Yes, I did.

11 Was I able to investigate them or have any type of input
12 to them? No.

13 THE COURT: So, Mr. Jackson, just stick with the
14 question. And if there's any follow-up, I'm sure that
15 Mr. Alexander will ask them.

16 THE WITNESS: Okay.

17 BY MR. GRIFFIN:

18 Q. And the only complaint that you were involved in at all
19 during your time period involving racial harassment against an
20 African American was the drawing incident that you mentioned
21 previously; correct?

22 A. Yes, sir.

23 Q. Okay. And that related to the picture on the bale of
24 cardboard; correct?

25 A. Yes, sir.

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1 Q. Now, I want to talk to you a little bit about Mr. Diaz.
2 You had an opportunity to interact with Mr. Diaz during your
3 time at the factory; right?

4 A. Yes, sir.

5 Q. And during your time, it's your understanding Mr. Diaz got
6 in altercations with a lot of people in the factory; right?

7 A. What do you consider "a lot"?

8 Q. Okay. What do I consider "a lot"?

9 Do you recall giving prior testimony in this matter that
10 Mr. Diaz got into altercations with a lot of people in the
11 factory?

12 A. Yes, sir.

13 Q. Okay. And he got into it with both Tesla staff and
14 contractors; right?

15 A. Yes, sir.

16 Q. And there were even a couple occasions where Mr. Diaz got
17 loud with you; right?

18 A. No, sir. He was respectful with me. He could be upset,
19 but he's not -- I don't think he's ever gone off on me or
20 anything.

21 Q. Okay. Can I direct you to your deposition testimony from
22 May 17, 2019, page 110, line 21?

23 **MR. ORGAN:** What page, Counsel?

24 **MR. GRIFFIN:** Page 110.

25 (Pause in the proceedings.)

1 **MR. GRIFFIN:** Are you there, Mr. Jackson?

2 **THE WITNESS:** Yes.

3 **BY MR. GRIFFIN:**

4 **Q.** And do you see the question on line 110? "So in terms of
5 your dealings and Owen Diaz, you didn't have difficulty with
6 him personally; is that correct?"

7 Your response was: "On most occasions, no. I mean I --
8 we did have a couple of cases where he and I -- Owen got a
9 little loud, and I was like, 'Owen, I'm here to try to help
10 you,' but nothing serious."

11 That was your testimony; correct?

12 **A.** Once again, that's what I just said to you.

13 **Q.** And your experience with Mr. Diaz was he was argumentative
14 from Day 1; correct?

15 **A.** I wouldn't say that, no.

16 **Q.** Can I direct you to your deposition testimony at page 36?

17 **A.** Uh-huh.

18 **Q.** Page 36, line 14.

19 **A.** Page 36?

20 **Q.** Yes.

21 (Pause in proceedings.)

22 **BY MR. GRIFFIN:**

23 **Q.** Are you there, Mr. Jackson?

24 **A.** Yes.

25 **Q.** And do you see line 14?

1 **A.** Yes.

2 **Q.** And the question was: "Now in terms of Mr. Diaz's
3 attitude or argumentativeness, did that occur after the jigaboo
4 drawing happened?"

5 And your response was: "No, sir. That was probably from
6 Day 1, to be honest."

7 Correct?

8 **A.** Uh-huh.

9 **Q.** And that was your testimony under oath?

10 **A.** Yes.

11 **Q.** Okay. And you recall there were a lot of complaints about
12 Mr. Diaz; right?

13 **A.** Uh-huh.

14 **Q.** After seeing all this, Mr. Diaz's interactions with
15 contractors, with you, with Tesla employees, you reached a
16 conclusion that there was a pattern, that any time someone
17 complained about Mr. Diaz, he would say they were harassing
18 him; correct?

19 **A.** I don't know if that was the case, sir.

20 **Q.** Okay. Can I look to your deposition?

21 **A.** Okay.

22 **Q.** Page 134, line 1. Line 1 through 9, "QUESTION --

23 **THE COURT:** Hang on.

24 **MR. GRIFFIN:** Sorry.

25 **THE COURT:** If you wouldn't mind waiting.

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(Pause in proceedings.)

THE COURT: Where are you reading?

MR. GRIFFIN: 134, line 1 through 9, Your Honor.

MR. ORGAN: One moment, Your Honor.

(Pause in proceedings.)

THE COURT: You can proceed.

BY MR. GRIFFIN:

Q. Do you see the question, Mr. Jackson?

"QUESTION: And so you had no first-hand knowledge about the issue --

"No, sir.

"-- with Joyce DelaGrande?"

And your response was: "No, sir. Other than it kind of showed a pattern, to be very honest. Any time Owen got into it with someone, he would say, now they're threatening me. And that was just kind of a pattern you saw with Owen Diaz, you know."

That was your testimony under oath; correct, Mr. Jackson?

A. Yes, sir.

Q. Okay. And I want to go to this elevator incident you talked about in your testimony with Plaintiff's counsel in October 2017. Okay?

MR. GRIFFIN: Can we get Exhibit 92?

(Pause in proceedings.)

\\

1 **BY MR. GRIFFIN:**

2 **Q.** So Exhibit 92 is an e-mail from Tom Kawasaki to you at
3 4:37 a.m. on October 18; correct?

4 **A.** Honestly, I don't even recall who Tom Kawasaki was.

5 **Q.** Okay. But you received this e-mail from Tom Kawasaki at
6 roughly 4:30 in the morning on October 18; correct?

7 **A.** Yes, sir.

8 **Q.** And the bottom of the e-mail was a document you talked
9 with plaintiff's counsel, Mr. Diaz's initial complaint, about
10 his run-in with Ramon Martinez; correct?

11 **A.** Yes, sir.

12 **Q.** And I want to direct your testimony -- I mean, your
13 attention to the middle of this paragraph starting with the
14 word "For some reason."

15 Do you see that?

16 **A.** Yes, sir.

17 **Q.** And that's Mr. Diaz's complaint, the one that he wrote on
18 October 17 describing this interaction with Mr. Martinez.

19 Mr. Diaz writes: "For some reason, Ramon jumped off the
20 tugger he was on and started yelling at me in a threatening
21 manner saying, 'You have a problem with me. Why are you
22 telling him who his supervisor is? When I did not say anything
23 to Ramon, followed me into the elevator and stood next to the
24 forklift I was on and keep yelling at me. I thought he was
25 going to hit me, so I asked him to please step back because of

1 his threatening manner and reminded Ramon we are on camera.'" "

2 Do you see that?

3 A. Yes, sir.

4 Q. And those are the words that Mr. Diaz used to describe his
5 interaction with Mr. Martinez in that elevator; correct?

6 A. Yes, sir.

7 Q. And in that e-mail, you don't see any mention of the
8 N-word; correct?

9 A. No, sir.

10 Q. You don't see any mention that Mr. Martinez allegedly
11 called him chongo or mayate, told him to go back to Africa, or
12 any other racial slur; correct?

13 A. No, sir.

14 Q. And that's what Mr. Diaz put in his complaint; correct?

15 A. Yes, sir.

16 Q. And that's what Mr. Kawasaki forwarded to you on
17 October 18; correct?

18 A. Yes, sir.

19 Q. So he told you that there was a verbal dispute -- or this
20 e-mail, Mr. Diaz says there was a verbal dispute between he and
21 Mr. Martinez; correct?

22 A. Yes, sir.

23 Q. And as part of your job as a liaison, you wanted to
24 investigate to be prompt, thorough, and impartial in doing your
25 investigation; correct?

1 **A.** Yes, sir.

2 **Q.** Now --

3 **THE COURT:** Let me ask you when -- when would be a
4 good convenient time to take a break?

5 **MR. GRIFFIN:** We're probably -- 15 minutes,
6 Your Honor.

7 **THE COURT:** Okay. Well, no, then we'll take a break
8 now, and we'll come back in 15 minutes.

9 **MR. GRIFFIN:** Okay.

10 **THE COURT:** So, ladies and gentlemen, we'll be back at
11 about 12:10, 12:11. Please remember the admonitions: Don't
12 talk about the case. Don't do any research.

13 (Proceedings were heard outside the presence of the jury:)

14 **THE COURT:** Okay. We will be in recess.

15 (Recess taken at 11:57 a.m.)

16 (Proceedings resumed at 12:11 p.m.)

17 **THE CLERK:** Please come to order.

18 **THE COURT:** Mr. Griffin, are you ready to go?

19 **MR. GRIFFIN:** Yes, Your Honor.

20 **THE COURT:** Okay.

21 (Pause in proceedings.)

22 (Proceedings were heard in the presence of the jury:)

23 **THE COURT:** All right. Please be seated, everybody.
24 Mr. Griffin, go ahead.

25 **MR. GRIFFIN:** Thank you, Your Honor.

1 **BY MR. GRIFFIN:**

2 **Q.** Mr. Jackson, before we broke, we were talking about this
3 October 17, 2015, incident. Do you recall that?

4 **A.** Yes, sir.

5 **Q.** And Mr. Diaz's written complaint; correct?

6 **A.** Yes, sir.

7 **Q.** And in that complaint, you confirmed that Mr. Diaz didn't
8 write anything about any racial slurs that Mr. Martinez
9 allegedly said against him in that elevator; correct?

10 **A.** No, sir, he didn't write -- he didn't write, no, he did
11 not.

12 **Q.** Okay.

13 **MR. GRIFFIN:** And can we go to Exhibit 74.

14 **BY MR. GRIFFIN:**

15 **Q.** And it should be on your screen, sir.

16 By the next day on, October 19, you had already started
17 your investigation into this complaint that Mr. Diaz had;
18 correct?

19 **A.** Yes, sir.

20 **Q.** And you e-mailed Deb Gryske that "I'm actually on the
21 phone doing the investigation of the Ramon Owen incident";
22 correct?

23 **A.** Yes.

24 **Q.** And you said "the Ramon Owen incident"; correct?

25 **A.** Yes.

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1 Q. Because isn't it true that Mr. Martinez had actually
2 complained about Mr. Diaz before Mr. Diaz sent you the
3 complaint; correct?

4 A. Well, they complained about each other.

5 Q. Okay. But Mr. Martinez was first in time; correct?

6 A. I don't recall if he was first or not. I'm not sure who
7 started complaining first. I don't recall that.

8 MR. GRIFFIN: It we can get Exhibits 49 and 92 on the
9 screen together.

10 (Pause in proceedings.)

11 BY MR. GRIFFIN:

12 Q. You'll see Ramon Martinez sent an e-mail to Ed Romero at
13 4:56 a.m.; correct? Complaining about "Subject: Owen." Do
14 you see that?

15 A. Uh-huh.

16 Q. And Mr. Martinez said: "Hi, Mr. Romero. I just want to
17 bring your attention that the lead for the elevator, Owen, he's
18 not acting on professional way with me. I would like to talk
19 to you about it. If there's any situation, I'd like to fix it,
20 please."

21 That's what Mr. Martinez said at 4:56 a.m.; correct?

22 A. Yes, sir.

23 Q. Okay. And then later on, about a little over an hour
24 later, Mr. Diaz comes up with his complaint to Mr. Romero and
25 Mr. Kawasaki; correct?

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1 **A.** Yes, sir. I'm looking at the time. One says 4:45 and one
2 says 4:56, so about the same time.

3 **Q.** For the record, it's 4:56 a.m. for Mr. Martinez's e-mail
4 and 6:08 a.m. for Mr. Diaz's e-mail; correct?

5 **A.** Yeah. I'm just saying the time that you see the very --
6 "Mr. Romero today at 4:45 a.m.," so if I'm looking at that and
7 I'm looking at when Ramon sent his e-mail, it's after they must
8 have had the incident, the run-in.

9 **Q.** Correct. So Mr. Diaz even writes 4:45 a.m., so within
10 10 minutes almost --

11 **A.** Yes, sir.

12 **Q.** -- Mr. Martinez is letting Mr. Romero know that he had a
13 problem with Mr. Diaz; right?

14 **MR. GRIFFIN:** Can we go to Exhibit Number 76? Can we
15 go wide, Ray?

16 (Pause in proceedings.)

17 **BY MR. GRIFFIN:**

18 **Q.** So Exhibit Number 76 is an e-mail that you -- an e-mail
19 chain between you and your supervisor Terri Garrett at
20 nextSource; correct?

21 **A.** Yes.

22 **Q.** Because you were involved with this situation and you were
23 going through your steps of gathering information, being
24 prompt, objective, and thorough; right?

25 **A.** Yes, sir.

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1 **Q.** And so you e-mailed Ms. Garret on October 21, and you
2 state: "Yes, I have spoken with all three, and I will be
3 speaking with Ramon and Owen again on Friday"; correct?

4 **A.** Yes.

5 **Q.** And "all three" means Rothaj Foster, Owen Diaz, and Ramon
6 Martinez; correct?

7 **A.** Yes. As I stated before, I think I spoke to Rothaj, but I
8 don't believe he was a nextSource -- under the nextSource
9 umbrella. So at that point, I don't believe I had any more
10 contact with him after that.

11 **MR. GRIFFIN:** And can we go to Exhibit 254? Could you
12 blow up the bottom e-mail, Ray?

13 **BY MR. GRIFFIN:**

14 **Q.** Now, with regard to your ability to communicate with
15 Rothaj Foster, here's an e-mail from you to Ed Romero, Victor
16 Quintero, and numerous other people about your interactions
17 with Mr. Foster on November 6th; correct?

18 **THE COURT:** Counsel, what exhibit is this?

19 **MR. GRIFFIN:** 254.

20 **BY MR. GRIFFIN**

21 **Q.** Oh, I'd like to refresh your recollection --

22 **MR. GRIFFIN:** I'm sorry, Your Honor. I made a
23 mistake. I would like to refresh his recollection with this
24 exhibit.

25 **THE COURT:** Okay. So what exhibit number is that?

1 **MR. GRIFFIN:** It's 254.

2 **THE COURT:** So that's not a document that I have
3 either?

4 **MR. GRIFFIN:** No, Your Honor.

5 Do we have a copy?

6 (Pause in proceedings.)

7 **THE COURT:** Let's have the document, please.

8 And what is the -- what's the pending question?

9 **MR. GRIFFIN:** About whether or not he interacted with
10 Mr. Foster related to his ability to collect information from
11 Mr. Rothaj Foster, Your Honor.

12 (Pause in proceedings.)

13 **MR. GRIFFIN:** I think Mr. Jackson's testimony is that
14 Mr. Foster wasn't under the nextSource umbrella such that he
15 couldn't speak with him. And I'd like to refresh his
16 recollection that he had the ability to talk to him several
17 weeks later.

18 **THE COURT:** So that he was under the nextSource
19 umbrella?

20 **MR. GRIFFIN:** Correct, that Mr. Jackson several weeks
21 later had an investigation involving collecting information
22 from Mr. Foster.

23 **THE COURT:** Okay. You can -- you can use it for that
24 purpose only.

25 **MR. GRIFFIN:** Yes, sir.

1 **BY MR. GRIFFIN:**

2 **Q.** Mr. Jackson, can you read the e-mail at the first page of
3 Exhibit 254 from 7:32 a.m.?

4 **A.** It looks like --

5 **THE COURT:** Take it off the screen.

6 So the rule is that any document that has been admitted
7 into evidence already can be on the screen.

8 Any deposition snippet that counsel wants to use cannot be
9 on the screen unless I allow it. Any exhibit that has not been
10 admitted previously, may not be put on the screen. Is that
11 clear?

12 **BY MR. GRIFFIN:**

13 **Q.** Mr. Foster, [sic] have you had an opportunity to read your
14 e-mail from November 6 at 7:32 a.m.?

15 **A.** Excuse me?

16 **Q.** Have you had an opportunity to read your e-mail from
17 November 6th at 7:32 a.m.?

18 **A.** Yes.

19 **Q.** Does that refresh your recollection that you had an
20 opportunity to speak with Mr. Foster to gather information for
21 investigations?

22 **A.** This was -- I don't believe this was an investigation. It
23 looks like his -- he wasn't certified to drive a forklift. So
24 this wasn't an investigation. It looks like he's not certified
25 to drive a forklift.

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1 Q. Okay.

2 MR. GRIFFIN: I'd like to go back to Exhibit
3 Number 72, which is admitted -- I mean 76.

4 (Pause in proceedings.)

5 BY MR. GRIFFIN:

6 Q. Are you there, Mr. Jackson?

7 A. Yes.

8 Q. It should be on the screen.

9 So you e-mailed Terri Garrett, who's your supervisor, on
10 the morning of October 21st; correct --

11 A. Uh-huh.

12 Q. -- to inform her about the status of your investigation
13 into the dispute between Mr. Diaz and Mr. Martinez; correct?

14 A. Uh-huh.

15 Q. And as a part of this incident, you state that you
16 interviewed Mr. Diaz and Mr. Martinez; right?

17 A. Yes.

18 Q. And when you interviewed Mr. Diaz related to this dispute
19 in the elevator in October 2015, he did not make any claim to
20 you that Mr. Martinez had ever used the N-word; isn't that
21 correct?

22 A. No. He just kept saying he was very hostile towards him.

23 Q. Okay. But no use of the N-word; correct?

24 A. Not that I recall.

25 Q. And, in fact, Mr. Diaz did not report to you when you were

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1 talking to him during your interview that Mr. Martinez had used
2 any offensive words. Didn't report mayate; didn't report porch
3 monkey; didn't report that Mr. Martinez said "N-word, go back
4 to Africa;" correct?

5 **A.** I don't recall that.

6 **Q.** Okay. So you have no -- and -- so as you sit here today,
7 you can't tell this jury whether -- or strike that.

8 So you don't recall Mr. Diaz making any reports at all
9 related to racial, hostile language having to do with that
10 elevator incident --

11 **A.** Hostile language, yes.

12 **Q.** Racially --

13 **A.** I wouldn't call it racial, per se, but hostile,
14 definitely.

15 **Q.** Okay. I'm going to clarify my question, Mr. Jackson.

16 As you sit here testifying today, you don't have any
17 recollection of Mr. Diaz reporting to you any racially hostile
18 language as a part of that dispute he had with Mr. Martinez in
19 October of 2015; correct?

20 **A.** Not to my recollection, no.

21 **Q.** And then even with regards to the complaints of physical
22 threats, isn't it true that when Mr. Diaz talked to you, his
23 statements about physical threats were different than what he
24 put in his e-mail?

25 **A.** What do you mean by that?

1 Q. So he was -- his statement in his e-mail about physical
2 threats from Mr. Martinez was inconsistent with what he told
3 you when you spoke to him; correct?

4 A. I don't agree with that, no. I don't agree with that. I
5 don't believe that was the case. He was very upset that he
6 was -- he felt threatened.

7 Q. And Mr. Diaz did not express to you that he thought
8 Mr. Martinez was going to strike him, did he?

9 A. No. I think he did think Mr. Diaz was going to strike
10 him. He thought he was going to fight, they were going to get
11 into a fight. As a matter of fact, if I remember looking at
12 the video, Mr. Diaz did this (indicating) while he was in the
13 elevator, put his hands up, after Ramon had jumped off the
14 tigger.

15 Q. Okay. Can I direct your attention to your deposition,
16 page 64, line 21.

17 (Pause in proceedings.)

18 **BY MR. GRIFFIN:**

19 Q. Are you there, Mr. Jackson?

20 A. Yes.

21 Q. And the question was: "Does that refresh your
22 recollection? Did you actually talk to Mr. Diaz after you
23 received his written complaint here in Exhibit 126?"

24 "ANSWER: I believe so, yes, sir."

25 "QUESTION: And was Mr. Diaz's complaint to you verbally

1 the same as his complaint in writing?"

2 "ANSWER: No, sir."

3 Then if you go down to line 21 --

4 "QUESTION: There were additional things that Mr. Diaz
5 told you in the -- when he talked to you."

6 "ANSWER: Well, what he is saying here about he thought he
7 was going to be struck. He didn't really express that."

8 "QUESTION: He didn't express that when you talked to
9 him?"

10 "ANSWER: No, sir."

11 "QUESTION: You talked to Mr. Diaz after you received a
12 copy of his e-mail complaint; is that true?"

13 "ANSWER: Yes, sir."

14 So that was your testimony under oath in a prior
15 proceeding that when you talked to Mr. Diaz in October 2015, he
16 did not tell you that he thought he was going to be struck;
17 correct?

18 **A.** You know, sir, I don't recall that. I recall that they
19 were going to get into a fight, and I do recall Mr. Diaz doing
20 this (indicating) once again during that confrontation.

21 **Q.** Okay.

22 **A.** So people don't do this (indicating) if they don't think
23 something is about to happen.

24 **MR. ALEXANDER:** May the record reflect that the
25 witness is holding his hands up in a defensive manner?

1 **THE COURT:** Yes, the record shall so reflect.

2 **BY MR. GRIFFIN:**

3 **Q.** You actually had an opportunity to collect the video and
4 review --

5 **A.** No, I did not collect the video.

6 **THE COURT:** Hang on, Mr. Jackson. Let Mr. Griffin ask
7 the question.

8 **THE WITNESS:** I'm sorry.

9 **BY MR. GRIFFIN:**

10 **Q.** So you testified about seeing the video?

11 **A.** Yeah, I recall that. I'm almost positive I saw the video
12 in the recycling area with -- I think it was Owen and Victor.
13 But I didn't collect the video. I didn't keep the video. I
14 think it was a quick scroll through it and onto the next.

15 **Q.** Okay. And isn't it true that you don't recall any racial
16 issues between Mr. Martinez and Mr. Diaz until the January
17 drawing?

18 **A.** That's when it all became that it was racial, yes.

19 **Q.** Okay.

20 **A.** And it was pretty obvious.

21 **Q.** Okay. With regard to the drawing incident, I want to put
22 your attention to Exhibit 272.

23 (Pause in proceedings.)

24 **BY MR. GRIFFIN:**

25 **Q.** It should be on the screen, sir. And Exhibit 272, the

1 first -- the e-mail you received at 8:46 a.m., Mr. Diaz
2 forwards a copy of his e-mail to you complaining of this
3 incident about the drawing; correct?

4 A. Yes.

5 Q. And then you at 9:19 a.m. reach out to your supervisor
6 from nextSource to inform her of this complaint; correct?

7 A. Yes.

8 Q. And then within 14 minutes, you and Ms. Garrett, your
9 supervisor at nextSource, get on the phone and discuss this
10 serious issue and how you are going to deal with it; correct?

11 A. Yes. I believe so.

12 Q. And then so Ms. Garrett responds back to you at 9:33, and
13 she says: "Per our conversation" -- because you had spoken in
14 that 14-minute period; correct?

15 A. Uh-huh.

16 Q. "Per our conversation "-- you and she discussed
17 two options for Mr. Martinez; correct?

18 A. Uh-huh.

19 Q. And the two options that you discussed with Ms. Garrett
20 were first, a strong warning and grounds for termination if he
21 has another mishap on any level; correct? That was Number 1;
22 right? Correct?

23 A. Yes.

24 Q. And Number 2, termination due to the level of insult to
25 the workforce and zero-tolerance policy; correct?

1 **A.** Yes.

2 **Q.** And you and Ms. Garrett had this conversation about the
3 potential discipline for Mr. Martinez before you ever spoke to
4 anybody at Tesla; correct?

5 **A.** I don't know if Ms. Garrett talked to anyone at Tesla at
6 that point. I don't know.

7 **Q.** But you hadn't?

8 **A.** I had not, no.

9 **Q.** Okay. And then -- but that first recommendation, the
10 suspension and -- a strong warning and a suspension, that's
11 what ultimately Mr. Martinez got; correct?

12 **A.** I don't see the suspension. I see grounds for
13 termination.

14 **Q.** Okay. Ultimately, Mr. Martinez received a three-day
15 suspension and a final written warning; correct?

16 **A.** Yes.

17 **Q.** Okay.

18 **MR. GRIFFIN:** And can we go to the e-mail at
19 10:19 a.m., still on Exhibit 274.

20 **BY MR. GRIFFIN:**

21 **Q.** In the hours between that initial conversation with you
22 and Miss -- Ms. Garrett, you met with Victor and you reported
23 back to Ms. Garrett about your continuing investigation, right,
24 sir?

25 **A.** Uh-huh.

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1 Q. And you said: "I just met with Victor. He suggested that
2 we do a final written warning for Ramon. I told Victor I
3 didn't think that was enough. My suggestion to him was a final
4 written warning with a three-day suspension without pay.
5 Victor thought that was an even better idea."

6 That's what you wrote to Ms. Garrett; correct?

7 A. Yes, sir.

8 Q. So you had a conversation with Mr. Quintero that morning;
9 right? Yes?

10 A. Yes.

11 Q. And you discussed various different options; correct,
12 Mr. Jackson?

13 A. Yes.

14 Q. And ultimately, there was a determination that you would
15 both recommend a final written warning with a three-day
16 suspension; correct?

17 A. Yeah. And I know I talked to Victor and told him about
18 some training for Ramon as well. I don't think that was in the
19 e-mail, but I did inform him there should be some type of
20 training.

21 Q. And you don't think that Mr. Quintero was less concerned
22 about this drawing issue than you do; correct, Mr. Jackson?

23 A. No. I do feel he was less concerned because of the
24 statement he made to me that "Ramon is a good worker. I don't
25 want to lose a good worker."

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1 **Q.** Can you go to your deposition at page 78, line 15? Are
2 you there, Mr. Jackson?

3 **THE COURT:** I'm not.

4 **MR. GRIFFIN:** Sorry, Your Honor.

5 **THE COURT:** I appreciate the speed with which you are
6 going, but I don't work quite as fast. 78:15?

7 **MR. GRIFFIN:** Yes, Your Honor.

8 **THE COURT:** Go ahead.

9 **BY MR. GRIFFIN:**

10 **Q.** "QUESTION: And Mr. Quintero, he was less concerned about
11 the jigaboo drawing than you are; is that" --

12 "ANSWER: No, sir. I would not say" --

13 "ANSWER: I would not say that at all."

14 That was your testimony under oath when you were asked if
15 Mr. Quintero was less concerned about the jigaboo drawing than
16 you were; correct, Mr. Jackson?

17 **A.** Yes, sir.

18 **Q.** And that deposition was two years ago -- or several years
19 ago in 2019, Mr. Jackson?

20 **A.** Yes, sir.

21 **Q.** Closer to the time that you were at the factory doing this
22 investigation; correct, Mr. Jackson?

23 **A.** Three years after, yes, sir.

24 **Q.** But much closer than we are eight years later now; right?

25 **A.** Yes, sir.

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1 Q. And between then and now, you've had conversations with
2 Plaintiff's counsel; correct?

3 A. With Plaintiff's counsel, other than going over my
4 testimony, that's the only conversation I've ever had.

5 Q. Okay. So with --

6 A. It's been brief conversations there. I haven't really
7 talked to their counsel but a couple of times, to be very
8 honest.

9 Q. Okay. So between the time you got this report shortly
10 before 9:00 o'clock in the morning and two hours later, you had
11 spoken to Mr. -- you had spoken to your boss, Ms. Garrett;
12 correct?

13 A. Uh-huh.

14 Q. You spoke to Mr. Quintero; correct?

15 A. Uh-huh.

16 Q. And you'd come up with a recommendation for a recommended
17 discipline; correct?

18 A. Yes.

19 Q. Then I want to go to Exhibit 284 -- 284-2. At 11:26 a.m.,
20 the same morning you reached out to Chartwell, which was
21 Mr. Martinez's staffing agency; correct?

22 A. Yes.

23 Q. And you informed Chartwell that: "Hi Veronica, this
24 serious" -- and I think you meant to say issue -- "came up
25 today"?

1 A. Yes.

2 Q. "And I believe Chartwell is its EOR. What is your policy
3 with regards to discrimination? Please review the e-mail below
4 and get back to me with what your policy is so I can address."

5 That's what you wrote; correct?

6 A. Yes.

7 Q. And then Chartwell got back to you several hours later at
8 3:18; correct?

9 A. Uh-huh.

10 Q. And they told you that they had already started
11 investigation and that -- and what they wrote was: "I was able
12 to speak to Ramon, and he is on his way to my office so we can
13 start an investigation. I have also notified my HR director of
14 the situation as well. We will keep you updated." Correct?

15 A. Yes, sir.

16 Q. So at this point in time, you were involved from
17 nextSource, Tesla had been informed, and the staffing agency
18 was doing its own investigation; correct?

19 A. Yes, sir.

20 MR. GRIFFIN: Then let's go to 284, your e-mail at
21 3:38 p.m.

22 BY MR. GRIFFIN:

23 Q. And then at 3:38 time p.m., you e-mail your boss again to
24 give her a status update; correct, Mr. Jackson?

25 A. Yes.

JACKSON - CROSS / GRIFFIN

1 Q. And you state: "Good afternoon. I just got off the phone
2 with Chartwell. They are investigating the incident and will
3 most likely, per their policy, the result will be a final
4 written warning with a three-day suspension without pay. I'm
5 waiting for them to confirm this now."

6 That's what you wrote at the time; right, Mr. Jackson?

7 A. Yes, sir.

8 Q. And you continued, you said: "I have spoken with Ramon,
9 and he has apologized for his actions and has assured me that
10 he in no way meant to offend anyone. He said he promises
11 nothing like this will ever happen again. He is headed over to
12 Chartwell to speak with them." Correct?

13 A. Yes. That's when he apologized to me.

14 Q. And then with regards to Mr. Diaz, you wrote: "I also
15 spoke with Owen Diaz, and he has been made aware we are taking
16 this issue seriously, and it will be addressed today."

17 That's what you wrote; correct?

18 A. Yes.

19 Q. And then Mr. Diaz responded that he was fine with that,
20 and he just wanted it to be addressed; correct?

21 A. Yes, sir.

22 Q. That's what the -- that's what you spoke to Mr. Diaz about
23 on that day; correct?

24 A. I believe so.

25 Q. And there is no reference in your summary, in your

1 discussion with Mr. Diaz, that he reported any racial hostile
2 conduct related to Ramon Martinez other than this drawing. No
3 slurs, no use of mayate, no chongo, no N-word.

4 That wasn't what Mr. Diaz told you when you talked to him
5 in January; correct?

6 **A.** I can't remember all the conversations, but he could have
7 said that. I don't recall right off the top of my head, no.

8 **Q.** But you were prompt, thorough, and objective; correct,
9 Mr. Jackson?

10 **A.** That's irrelevant, sir, if I recall a conversation. If I
11 didn't take a statement from him, that's different than him
12 saying something or him being upset in the moment.

13 You don't even hear a lot of what people say when they're
14 upset because they can be very agitated. They can be hostile.
15 Well, I won't say "hostile," but they can be upset. They can
16 be -- they can feel they've been violated, and they can't get
17 words out right.

18 So it's different when you give a statement as opposed to
19 someone saying something.

20 **Q.** Okay. But you didn't put any of that in your e-mail to
21 Ms. Garrett that day?

22 **A.** No, I did not. No, I did not, sir.

23 **Q.** And with regards to the recycling crews and making sure
24 that these folks know that this wasn't supposed to happen
25 again --

JACKSON - CROSS / GRIFFIN

1 A. Yes, sir.

2 Q. -- you went out to the factory three different times?

3 A. Yes, sir.

4 Q. Talked to everybody in the recycling team.

5 A. Yes, sir.

6 Q. Day shift, swing shift, and night shift; correct?

7 A. Yes, sir.

8 Q. And you informed them about the drawing; that it was
9 inappropriate; correct?

10 A. Yes, sir.

11 Q. You told them about Mr. Martinez's discipline; correct?

12 A. I don't believe I told them about his discipline. I don't
13 think I shared that.

14 Q. Okay.

15 A. I told them that we were looking into it. It was
16 unacceptable behavior. I know that, yes.

17 Q. And you made sure that they knew that this behavior was
18 inappropriate and shouldn't happen again; correct?

19 A. Yes, sir.

20 Q. With all the people that were involved in this department;
21 correct?

22 A. Yes, sir.

23 Q. From the --

24 A. For the most part, yeah. I tried to meet each shift.

25 Have the shift supervisor there or lead and let them know that

1 that type of action is not acceptable.

2 Q. Okay. So we need to talk about a sensitive topic,
3 Mr. Jackson, which is the N-word. Okay?

4 A. Yes, sir.

5 Q. You and I -- and you've discussed a little bit that
6 there's -- the N-word with an A is different than the N-word
7 with the ER; correct?

8 A. I don't think it's different. It's disrespectful.

9 Q. And, in fact --

10 A. It's just used differently.

11 Q. Okay. You understand that N-I-G-G-A is more like an
12 acknowledgment of a friend, like a "What's up, my N-I-G-G-A"?

13 A. Yes, sir.

14 Q. Like, "What's up, my friend" type of thing; correct?

15 A. Yes, sir. Still not appropriate.

16 Q. And now when you say the N-word -- now when you hear the
17 N-word version in the factory, you honestly didn't feel like
18 the people using that word were trying to offend anybody;
19 correct?

20 MR. ALEXANDER: Objection --

21 THE WITNESS: I was offended.

22 THE COURT: Hang on just a second, Mr. Jackson.

23 What's the objection?

24 MR. ALEXANDER: Speculation.

25 THE COURT: Overruled.

JACKSON - CROSS / GRIFFIN

1 **THE WITNESS:** I was offended. So for you to not be a
2 Black man and sit here and tell me how anybody else should feel
3 about that word is unacceptable to me.

4 **MR. GRIFFIN:** I am a Black man, sir. My father is
5 African American. Don't come after me.

6 **THE WITNESS:** Then you should understand. Then you
7 should understand, sir. You should understand.

8 **THE COURT:** All right. Mr. Jackson. Mr. Jackson,
9 stop.

10 Let's go with the question.

11 **BY MR. GRIFFIN:**

12 **Q.** My question to you was: Now, when you heard the A version
13 of the N-word in the factory, you honestly didn't feel that the
14 people saying it were trying to offend anybody; correct?

15 **A.** They were saying it in their manner, sir.

16 **Q.** Okay. Can I just --

17 **A.** Does it offend someone? I don't know. It could offend
18 anyone.

19 **Q.** Can you go to your deposition, line 47 -- page 147,
20 line 20.

21 (Pause in proceedings.)

22 **THE COURT:** What page again? I'm sorry.

23 **MR. GRIFFIN:** 147, line 20.

24 **THE COURT:** Hang on.

25 (Pause in proceedings.)

JACKSON - CROSS / GRIFFIN

1 **MR. ALEXANDER:** To what line?

2 **MR. GRIFFIN:** 148, line 6.

3 (Pause in proceedings.)

4 **THE COURT:** Okay.

5 **BY MR. GRIFFIN:**

6 **Q.** In your deposition, you were asked: "QUESTION: Okay. If
7 you can tell me as best you can recall what are the areas that
8 you recall hearing the A version of the N-word at the Tesla
9 factory?"

10 And your answer was: "On the floor closer to some of the
11 satellite cafeterias where people would go to lunch, and they'd
12 be having just common conversations. Like I said, I don't -- I
13 honestly don't feel like they were trying to offend anybody."

14 "It's just kind of what the culture has evolved into as of
15 late. It's unfortunate, but I don't necessarily feel they were
16 trying to say it in an offensive way."

17 **MR. ORGAN:** Objection. He misstated the testimony,
18 Your Honor.

19 **THE COURT:** I think he read it fine. If there's a
20 problem, you can come back on redirect.

21 **BY MR. GRIFFIN:**

22 **Q.** That was your testimony; right, Mr. Jackson?

23 **A.** Yes, sir.

24 **Q.** Okay.

25 **A.** And it's sad that we're there.

JACKSON - CROSS / GRIFFIN

1 **Q.** And, in fact, even with regards to the word N-I-G-G-A, you
2 only heard that word three or four times during the time period
3 you were at the Tesla factory; correct?

4 **A.** No, sir.

5 **Q.** Can you go to your deposition page 150, line 25.

6 (Pause in proceedings.)

7 **MR. ORGAN:** What page and line, Counsel?

8 **MR. GRIFFIN:** Page 150, line 25.

9 (Pause in proceedings.)

10 **MR. ALEXANDER:** To?

11 **MR. GRIFFIN:** 151:9.

12 (Pause in proceedings.)

13 **BY MR. GRIFFIN:**

14 **Q.** "QUESTION: In terms of the number of times that you heard
15 the N-word with an A at Tesla, how many times -- what's your
16 best estimate of the number of times that you heard that?"

17 "ANSWER: Three, four times, probably."

18 "QUESTION: And did you report that to HR?"

19 "ANSWER: No, sir."

20 "QUESTION: Why not?"

21 "ANSWER: Because of a context in which it was being used.

22 It wasn't being used, at least in my opinion, to offend."

23 That was your testimony, correct, under oath, Mr. Jackson?

24 **A.** Yes, sir.

25 **Q.** Okay.

JACKSON - CROSS / GRIFFIN

1 **A.** And it's probably more than that, to be very honest.

2 **Q.** Your testimony under oath was three or four times;
3 correct, Mr. Jackson?

4 **A.** Was the context a day, or was it -- what time period is
5 it?

6 **Q.** Okay. With regards to the N-I-G-G-E-R, you never heard
7 that word in the Tesla factory; correct?

8 **A.** Not towards me.

9 **Q.** You never heard the word, period?

10 **A.** Not towards me.

11 **Q.** You never heard the word --

12 **A.** Not towards me.

13 **THE COURT:** Mr. Jackson, you've got to wait until the
14 question is finished and then give an answer to the -- to the
15 entire question, which is not just towards you, but did you
16 ever hear it?

17 **THE WITNESS:** Yes, sir.

18 **BY MR. GRIFFIN:**

19 **Q.** And you never heard the word N-I-G-G-E-R at the Tesla
20 plant; correct?

21 **A.** If that's what you would like to say, fine.

22 **Q.** I'm asking you the question. Mr. Jackson, you never heard
23 the word N-I-G-G-E-R at the Tesla factory?

24 **A.** Sir, I've heard that word so many times.

25 **Q.** I'm just asking about --

1 **A.** You guys are being very specific about an ER, an A.
2 People pronounce it differently. It is said there. Has been
3 said there, probably continues to be said there. I haven't
4 been there in years. Okay.

5 When I was there, that word was used constantly. Can I
6 say that to you now? That word was used constantly. Whether
7 you feel it was a bad way or a good way, it was used. That's
8 what I'm telling you. That is the truth. That word has been
9 used. I don't know if it's still used. I don't know if
10 Tesla's changed that, but they allowed it. It was allowed.

11 It was never directed at me personally, but do I get
12 offended by it? Yes. I don't want to see a young Asian man
13 calling another Asian man a nigger. That word has significance
14 to me.

15 I have served my country. I've been in the military.
16 I've been called that in the service. So to tell me that it's
17 an A or ER, it doesn't matter to me. It shouldn't be used at
18 all. I can't be any clearer on that.

19 And you can say it's a sensitive matter, and it is for me.
20 It really is.

21 **Q.** We had an opportunity to depose you in this case
22 four years ago, didn't we, Mr. Jackson?

23 **A.** Yes.

24 **Q.** And if you go to your deposition at line -- page 150,
25 line 18 to line 24.

JACKSON - CROSS / GRIFFIN

1 **A.** Yes, sir.

2 **Q.** And can you read --

3 **MR. GRIFFIN:** Your Honor, are you there?

4 **THE WITNESS:** Yes.

5 **THE COURT:** Yeah. Go ahead.

6 **BY MR. GRIFFIN:**

7 **Q.** Okay. And the question was: "Did you hear the ER version
8 of the N-word at Tesla?"

9 And your answer was during your deposition under oath:
10 "No. I think that's even a more disparaging version. So a lot
11 of people are super offended by that.

12 "QUESTION: Right. But you didn't hear that at Tesla;
13 right?"

14 And your answer was: "No. I did not."

15 Under oath; correct?

16 **A.** Yes, sir.

17 **MR. GRIFFIN:** So I just want to wrap up. With regards
18 to --

19 **THE COURT:** Would you like a break?

20 **JUROR KAUR:** For two minutes.

21 **THE COURT:** All right. Ladies and gentlemen, let's
22 take a pause, and the jury can go out for two minutes, and we
23 will be right back.

24 (Juror Kaur exited the courtroom.)

25 \\

JACKSON - REDIRECT / ALEXANDER

1 (An off-the-record discussion was had.)

2 (Recess taken at 12:44 p.m.)

3 (Proceedings resumed at 12:48 p.m.)

4 **THE COURT:** All right. Please be seated, everybody.

5 **JUROR KAUR:** Sorry.

6 **THE COURT:** Don't worry.

7 **MR. GRIFFIN:** No more questions for Mr. Jackson,
8 Your Honor.

9 **THE COURT:** Okay. Any redirect?

10 **MR. ALEXANDER:** Yes, please.

11 Your Honor -- excuse me -- page 141 of Mr. -- of the
12 deposition transcript of Mr. Jackson, lines 9 through 25.
13 Prior consistent testimony.

14 (Pause in proceedings.)

15 **MR. GRIFFIN:** Objection. Improper, Your Honor.
16 What's the question on the table?

17 **THE COURT:** The question is responding to one of your
18 readings of the deposition, so it's 141 --

19 **MR. ALEXANDER:** -- line 9 through 25.

20 **THE COURT:** You may proceed.

21 **MR. ALEXANDER:** Thank you, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. ALEXANDER:**

24 **Q.** "QUESTION: I'm going to ask you about a word that has
25 been -- that's come up a few times in this case. I don't want

1 you to be offended, but I have to use the word. The word is
2 nigger."

3 "ANSWER: Yes, sir."

4 "QUESTION: Did you ever hear anyone use that word at
5 Tesla?"

6 "ANSWER: Yes, sir."

7 "QUESTION: And what circumstances did you hear that word
8 being said?"

9 "ANSWER: There have been times where I actually walked --
10 been walking through the facility and there was -- one time in
11 particular, there was two Asian or Filipino gentlemen, and one
12 said like, 'What's up, my nigga?' -- with the A to the other
13 one. That type of thing. It still was offensive, but you
14 know, it wasn't my employee, so I didn't engage in it."

15 When you were walking around the workplace at Tesla and
16 you heard some version of the N-word, did it matter to you in
17 terms of your being offended whether it was the ER version or
18 the A version?

19 **A.** Once again, sir, as I stated before, making it about a
20 letter doesn't take away the offensiveness of the word.

21 Whether it's an A or an E, it's not something I engage in, it's
22 not something I have my kids engage in. I coach youth
23 football, I don't let them do it. So, yes, it's offensive.

24 **Q.** You indicated that Ramon Martinez apologized to you?

25 **A.** Yes, sir.

1 Q. At the point when he apologized, did you feel that that
2 apology was sincere?

3 A. I couldn't speak to the sincerity of it. I did tell him
4 that he thought it was a joke. And I was very clear with him
5 it was not a joking matter, it was not funny, and that I was
6 offended.

7 Q. You were referred to page 134, line 1 through 9, where you
8 had said during the deposition that: "Any time Owen got into
9 it with someone, he would say 'now they're threatening me' and
10 that was just kind of a pattern you saw with Mr. Diaz, you
11 know."

12 With regard to Owen Diaz saying that he was threatened,
13 did you ever conduct some form of investigation to confirm that
14 he was not being threatened?

15 A. I don't recall that portion at all, sir. I think some of
16 the other incidents had occurred with Tesla staff, so that
17 wouldn't be me doing an investigation.

18 Q. Okay. So you can confirm that he said he was threatened
19 after he made complaints, yes?

20 A. He felt threatened, yes.

21 Q. Right. And in terms of investigating, you're not aware of
22 anyone that investigated his statement that after he would
23 complain, he was threatened; is that right?

24 A. I don't know what investigations were done in that manner,
25 no.

1 Q. You did not conduct an investigation?

2 A. No, sir.

3 Q. Thank you.

4 You said that there were other investigations that
5 occurred inside the Tesla workplace that were racially related;
6 is that correct?

7 A. Yes. I'm sure there were. Not just racially, sexually,
8 too.

9 Q. Well, let's just stick with the racial. You only
10 conducted one racial investigation regarding Mr. Diaz; correct?

11 A. Yes, sir.

12 Q. But you were aware that there were other incidents of a
13 racial nature that occurred?

14 MR. GRIFFIN: Objection. Leading.

15 THE COURT: Sustained.

16 BY MR. ALEXANDER:

17 Q. Is it correct that there were other incidents of a racial
18 nature that occurred inside the workplace that you were aware
19 of?

20 MR. GRIFFIN: Leading, Your Honor.

21 THE COURT: Yeah. Sustained.

22 Just ask were there?

23 BY MR. ALEXANDER:

24 Q. Were there other incidents of --

25 A. I believe so, yes.

JACKSON - REDIRECT / ALEXANDER

1 **Q.** And how is it that you're aware that there were racial
2 incidents?

3 **A.** You would hear talk. People would talk about it.

4 **Q.** And when you say we would hear people talk about them,
5 first, with regard to those incidents, do you know whether they
6 were investigated?

7 **MR. GRIFFIN:** Objection. Calls for speculation.

8 **THE WITNESS:** I have no idea.

9 **THE COURT:** He asked "do you know."

10 **THE WITNESS:** Not that I'm aware of. I don't know.

11 **MR. ALEXANDER:** I'm going to want to split the screen.

12 If we could put up Exhibit Number 272.

13 **BY MR. ALEXANDER:**

14 **Q.** This is the exhibit from Victor -- I'm sorry. This is the
15 e-mail from Victor Quintero on January 22, 2016, at 10:20 a.m.
16 where he confirms: "I agree with the recommendation to suspend
17 and issue a permanent written warning."

18 Do you see that reference?

19 **A.** Yes, sir.

20 **Q.** And then if we could put next to it Exhibit 284 where
21 you're having a conversation that afternoon at 3:38, and you
22 say: "They're investigating the incident and most likely, per
23 their policy, the result will be a final written warning for
24 Ramon with a three-day suspension without pay."

25 Do you see that?

1 **A.** Yes, sir.

2 **Q.** Your conversation with Victor Quintero where a
3 determination was made of a three-day suspension occurred five
4 hours before or so you wrote this e-mail, Exhibit Number 284;
5 right?

6 **A.** Yes, sir.

7 **Q.** And it really was the case that Tesla dictated what the
8 discipline was going to be, not the staffing company; isn't
9 that correct?

10 **MR. GRIFFIN:** Objection. Leading.

11 **THE COURT:** Sustained.

12 **BY MR. ALEXANDER:**

13 **Q.** In this instance when you made this statement: "The
14 result will be a final written warning for Ramon"; is that
15 because you knew the result?

16 **MR. GRIFFIN:** Objection. Leading.

17 **THE COURT:** Sustained.

18 **BY MR. ALEXANDER:**

19 **Q.** With regard to your communications with us, you've had a
20 couple of communications with me; correct?

21 **A.** Yes, sir.

22 **Q.** And in those communications, other than providing you with
23 your deposition transcript --

24 **MR. GRIFFIN:** Objection. Leading.

25 **THE COURT:** Overruled.

1 You can continue.

2 **BY MR. ALEXANDER**

3 **Q.** Other than providing you with your deposition transcript
4 and asking you questions, did I do anything to influence your
5 testimony?

6 **MR. GRIFFIN:** Objection. Leading.

7 **THE COURT:** Overruled.

8 You can answer yes or no.

9 **THE WITNESS:** No, sir.

10 **BY MR. ALEXANDER:**

11 **Q.** My colleagues had contacted you in order to arrange for
12 you to be present, did they influence your testimony in any
13 way?

14 **MR. GRIFFIN:** Objection. Leading.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** No, sir.

17 **BY MR. ALEXANDER:**

18 **Q.** At any time that you've been communicated to by myself or
19 any of my colleagues, have they done anything to influence you
20 to give any testimony or change your testimony?

21 **MR. GRIFFIN:** Objection. Leading.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** I've been here to tell the truth as best
24 as I can remember. I don't have a dog in this fight, so...

25 **MR. ALEXANDER:** Nothing further.

OPPENHEIMER - DIRECT / COLLIER

1 **THE COURT:** Mr. Jackson, you're excused. Thank you.

2 **THE WITNESS:** Thank you.

3 **MR. COLLIER:** Your Honor, Plaintiff calls Amy
4 Oppenheimer.

5 **THE COURT:** Come on up, Ms. Oppenheimer.

6 **THE CLERK:** Stay standing for me for just a second so
7 I can take your photograph. Let me clear some of this also.

8 (Pause in proceedings.)

9 **THE CLERK:** If you will raise your right hand, please.

10 **AMY OPPENHEIMER,**
11 called as a witness for the Plaintiff, having been duly sworn,
12 testified as follows:

13 **THE CLERK:** Be seated. Please begin by stating your
14 full name and spelling it for the court reporter.

15 **THE WITNESS:** Sure. Amy Oppenheimer. A-M-Y,
16 O-P-P-E-N-H-E-I-M-E-R. And excuse me one minute because I have
17 hearing aids, and I had turned them up, and they're now echoing
18 throughout the courtroom. So I need to use my Bluetooth and
19 change that.

20 (Pause in proceedings.)

21 **THE WITNESS:** Okay. Much better.

22 **DIRECT EXAMINATION**

23 **BY MR. COLLIER:**

24 **Q.** Good afternoon, Ms. Oppenheimer.

25 **A.** Good afternoon. Is it afternoon already? Yeah.

OPPENHEIMER - DIRECT / COLLIER

1 Q. It is. It comes fast.

2 Where are you employed?

3 A. I'm currently employed with Oppenheimer Investigations
4 Group which is a law office that conducts investigations, does
5 training, some other type of neutral work in the employment
6 field.

7 MR. COLLIER: Can I ask you to just move the mic a
8 little bit back? We're getting those hard Ps popping. There
9 we go.

10 THE WITNESS: Okay.

11 MR. COLLIER: Much better.

12 BY MR. COLLIER:

13 Q. I'm sorry. Oppenheimer Investigations, what is
14 Oppenheimer Investigations?

15 A. We are a law office, and we conduct workplace
16 investigations, and we do some training on how to do workplace
17 investigations for human resource professionals and attorneys.

18 We do some mediation and conflict resolution work, but
19 probably about 90 percent of what we do is actually conducting
20 investigation.

21 Q. And do you train HR professionals?

22 A. Yes. I have -- myself been training HR professionals
23 since the late 1990s in how to do a workplace investigation. I
24 also train employees and employers on harassment prevention and
25 response, on non-defensive communication, on bias,

1 understanding implicit bias and being able to talk about it in
2 a non-defensive way.

3 Q. Understood.

4 And have you ever testified in court as an expert?

5 A. I have.

6 Q. What is your area of expertise?

7 A. Preventing and responding to workplace harassment and
8 discrimination.

9 Q. And what gives you -- other than what you've already told
10 us, what gives us -- what gives you expertise in that area?

11 A. I am an attorney and studied as an attorney in the field.
12 I also have studied with human resource professionals and
13 written a book about investigating harassment that was
14 published by Society of Human Resource Management, SHRM. I
15 have been working in the field for about 35 years.

16 I was on the task force through what was then called
17 Department of Fair Employment and Housing, which is now the
18 Civil Rights Agency for the State of California, working on --
19 writing and protocols and -- for an employer, guidelines to
20 respond to harassment.

21 And I founded an organization for workplace investigators
22 in 2009 and developed much of the training that was eventually
23 given ANSI, American National Standards, qualification to be --
24 to get a certificate in doing a workplace investigation.

25 So through my study and my development of curriculum, the

1 training that I've given, I've developed expertise in that
2 area.

3 **Q.** And these --

4 (Cell phone ringing.)

5 **BY MR. COLLIER:**

6 **Q.** All right.

7 **A.** So glad it wasn't me.

8 **Q.** Yes. And I think everyone feels that except the person
9 who has it happening.

10 All right. So the standards that you've described that
11 you helped to develop, have they been now memorialized in
12 regulations?

13 **A.** There are regulations that speak to employers having
14 responsibilities to prevent and respond to workplace harassment
15 and discrimination. A lot of the detail are in advisory rather
16 than something that's an actual regulation.

17 So EEOC has developed guidelines for employers, the DFEH
18 developed guidelines for employers. They're not strictly
19 considered regulations.

20 **Q.** And with the DFEH guidance that they've given, what was
21 your role in the development of that?

22 **A.** I was on the task force of three people who developed the
23 employer guidelines for how to investigate complaints of
24 harassment.

25 **MR. SPIRO:** Your Honor, we're going to object to any

1 testimony about guidelines that were passed in the last decade
2 since the incident. I know there's some testimony that they
3 may intend to elicit that's not relevant in our judgment to
4 this.

5 **THE COURT:** I would sustain that.

6 **MR. COLLIER:** And I don't intend to ask about the
7 guidelines themselves.

8 **BY MR. COLLIER:**

9 **Q.** And do you have any particular expertise on race
10 harassment?

11 **A.** I have done extensive training on racial bias, and I had
12 myself investigated many cases involving race discrimination,
13 racial harassment and bias. I've provided trainings on
14 cultural competency to investigate across racial lines.

15 And my law firm now consists of 19 attorneys of various
16 backgrounds and races, and we do investigations of all types of
17 racial and other forms of harassment and, you know, work
18 together to increase our cultural competence to be able to do
19 that.

20 **Q.** And we hired you for this retention; correct?

21 **A.** Correct.

22 **Q.** How much are you charging for your time?

23 **A.** \$600 an hour.

24 **MR. COLLIER:** At this time, I would tender
25 Ms. Oppenheimer as an expert on human resources and harassment

1 investigations.

2 **THE COURT:** Any objection besides what has been done
3 pretrial?

4 **MR. SPIRO:** I'm going to object based on relevancy.

5 **THE COURT:** Okay. You may proceed.

6 **MR. COLLIER:** Thank you, Your Honor.

7 **THE COURT:** Overruled.

8 **MR. COLLIER:** We'd like to display the slide show at
9 this point. Let's go to the next slide, please.

10 (Pause in the proceedings.)

11 **BY MR. COLLIER:**

12 **Q.** This slide here where we talk about the standard of care
13 to prevent racial harassment, my first question to you is:
14 Where did these standards come from?

15 **A.** Well, they started with the law, 1964, the Civil Rights
16 Act was passed, and that prohibited discrimination in
17 employment, and the main focus of the law had been race.

18 Shortly after it was passed, there were cases brought
19 based on racial harassment, and the Court determined that
20 harassment is a form of discrimination.

21 And then over the years as that law developed, then sexual
22 harassment was then considered by the Supreme Court a form of
23 sexual harassment, and the EEOC started passing -- I should say
24 issuing guidance on what to do to prevent and respond to
25 harassment.

1 And then at the same time law firms started developing
2 protocols to advise their clients; human resource organizations
3 started developing policies. Some of them in some states were
4 mandatory.

5 In California eventually there was mandatory training that
6 was passed, and that training includes certain things that need
7 to be covered during the training.

8 And so it's really evolved since 1964 over these many
9 years. Part of it relates to, you know, first how do you --
10 how do you prevent harassment from occurring, whether it's
11 racial or sexual or based on whatever protected category.

12 And then when it does happen, because you are not going to
13 prevent all harassment and discrimination, how do you respond?
14 And what is a reasonable and fair response, including what
15 should an investigation look like, when should they be done,
16 and what should happen afterwards to assure that there is both
17 appropriate remedial action and follow-up so that there isn't
18 ongoing problems in the workplace.

19 **Q.** And so would you describe for the jury these standards
20 that you set forth here.

21 **A.** Well, what I have here -- and I guess I could -- there are
22 so many places that one could look, but maybe I will just look
23 down at my own rather than try to look over here -- that first
24 of all, that employers have policies that are clear, that are
25 strongly worded, that are understandable, that set out both the

1 basic law but also examples of what harassment is, different
2 types of sexual or racial harassment, that its prohibited, how
3 you can complain, et cetera.

4 In addition to having the policies, they are supposed to
5 actually be distributed and people are supposed to be trained
6 on them, know what they are, feel secure that they can actually
7 follow those policies because having policies is just the first
8 step.

9 Certainly at this point -- these sort of standards were
10 developed in the 1990s, 2000. By 2000, any organization of any
11 size was aware of what sort of policies they needed to have,
12 and the focus then became what are you doing with those
13 policies.

14 And so, again, by the '90s and 2000, employers were
15 delivering training. Training became mandatory in some states,
16 as I said. And generally, more training for supervisors than
17 for line staff.

18 So in California there is an hour mandatory training for
19 employees but two hours for supervisors who have a greater duty
20 to prevent harassment and respond.

21 In addition to that, sending a consistent message so that
22 when there are incidents of harassment, that it's responded to
23 quickly; that there is a message, and the message has to come
24 from the top because if you have the person at the top saying
25 one thing and doing another or not saying what they should be

1 about harassment and discrimination, then the -- the whole
2 organization isn't -- is going to follow what they say, not
3 what they are told and is not going to get that consistent
4 message of how to behave.

5 Monitoring to make sure that it's actually working. Most
6 work environments, things happen that people are aware of and
7 yet they are not addressing.

8 So supervisors have to be trained that as you become
9 aware, that you do need to respond to those things.

10 You know, an example here are people hearing the N-word
11 shouldn't matter what context it's in.

12 Studies show that -- like if you take profanity, half of
13 employees don't mind profanity, half of employees do. So you
14 don't say, "Well, these people don't seem to mind this
15 profanity or these racial epithets or whatever."

16 You have to assume that people are going to be offended
17 even if they aren't speaking up. It's not so easy to be the
18 person who speaks up.

19 So supervisors are supposed to be monitoring and managing
20 and saying, "No. We don't tolerate that here. Find another
21 music to listen to. Find another way to joke."

22 And that means training people. It means teaching them
23 that that's not how to communicate that people truly are
24 offended. Lots of people really don't want to offend but
25 aren't taught how hurtful racial epithets are and what the

1 impact is, and so you have to be able to teach people that
2 which you do through the training.

3 And then when things happen, doing a good investigation.
4 It doesn't mean every investigation has to take two weeks and
5 be a 50-page report, but you do have to find out what happened
6 and report what your findings are and have a basis for it. And
7 then after you have completed the investigation, then you
8 decide what the action is going to be.

9 So a few informal discussions with no clarity about who is
10 responsible is not an adequate investigation. And HR has to be
11 trained about how to do it.

12 If you don't train your HR staff on how to do an
13 investigation, they are not going to know what to do.

14 Too often employers expect their HR staff to simply do it
15 without the support and training, but they have to be given
16 training. They have to be given authority so that they can do
17 the right thing when they want to do the right thing and the
18 tools to do it.

19 And then once the finding is made, progressive discipline.
20 Sure, in some circumstances -- zero tolerance means you pay
21 attention to everything. It doesn't mean you fire everybody
22 for anything they do. It means you take some action that is
23 based on the seriousness, and if that doesn't solve the
24 problem, you take more serious action next time.

25 Just like you aren't going to fire somebody for coming to

1 work five minutes late. But if they have a "no call, no show,"
2 they might be fired. You have to evaluate that seriousness.

3 And then once -- and generally, employers consider racial
4 epithets to be among the most serious type of harassment.

5 And so some employers will immediately fire somebody for
6 using a racial epithet. Some will not. I don't advocate that
7 you have to do it one way. You just have to give a clear
8 message and have progressive discipline so that it doesn't
9 continue.

10 And then monitoring the workplace. You can't pretend to
11 not know what's going on in your own workplace. Again, that's
12 what your supervisors are there for.

13 And you've got to support them to do that monitoring and
14 to take that action. And if you don't have that systemic
15 support for those ideals, the belief that people should be
16 treated respectfully and shouldn't be harassed and
17 discriminated against, then you are not going to have a
18 successful prevention program.

19 Just like a safety program, if you don't care -- if you
20 say we care about safety, but you ignore safety hazard and
21 don't train your supervisors and your managers on how to be
22 safe and just look the other way, you are not going to have a
23 safe workplace.

24 It's the same concept and, you know, I think it was
25 mentioned it is a safety issue. It's emotional safety.

1 Sometimes it's physical safety. But it is an aspect of safety
2 in the workplace.

3 **MR. COLLIER:** Let's advance two slides. I think we
4 already covered the next one.

5 Thank you.

6 (Pause in the proceedings.)

7 **BY MR. COLLIER:**

8 **Q.** So this is a slide you prepared to show the areas you
9 review when assessing the adequacy of an investigation?

10 **A.** Yeah. A lot of what I do is -- is evaluate a specific
11 investigation. When I'm asked to do that, I'm looking at these
12 four areas. I'm looking at first of all, was somebody assigned
13 to do this who had the basic qualifications? Did they have
14 either experience or training or some combination of that so
15 that they knew what they were doing?

16 Again, sometimes employers don't provide that training for
17 their HR staff. It's not that easy to just do an
18 investigation, so you have to provide the training that
19 somebody needs.

20 And then also were they impartial? Do they have conflicts
21 of interest and -- so that's the first question.

22 The second, was it reasonably thorough and documented? I
23 don't expect perfection but any clear -- anybody who would be a
24 witness to something that you still don't know what happened
25 about should be interviewed. There should be a documentation

1 as to what the person said so that you don't have to five years
2 later, ten years later try to remember and figure it out. It
3 should be right down there in your paper, this is what I did.
4 This is what I learned.

5 And then you have to make findings. You can't say, "Oh,
6 two people disagree, so there is no other witnesses. I don't
7 know what to do."

8 You have to determine who is more credible. If you have
9 witnesses and corroboration, that's great. You don't always,
10 and so then you have to go deeply into does -- whose version
11 makes more sense? Who is more believable and why?

12 And then you make those findings and you do it on the same
13 evidentiary standard that, you know, that the jury is going to
14 use here, a preponderance of the evidence, which is just a
15 little bit more, one side or the other.

16 Did the allegation happen or not? And that's what should
17 all be in the report. Sometimes there will also -- internal
18 people may also make recommendations about what discipline.
19 Sometimes somebody else makes that based on the report. Either
20 way is okay.

21 But then there does need to be that remedial action. And
22 it should be consistent with how that institution deals with
23 those, and it should be calculated to end the wrong behavior
24 and to send that message to the workforce that it won't be
25 tolerated.

1 Q. And did you have occasion to review three of the instances
2 alleged in this case?

3 A. Yes.

4 MR. COLLIER: Let's go to the next slide, please.

5 (Pause in the proceedings.)

6 THE WITNESS: We've heard a lot about them today. I
7 got to sit in and hear some of the testimony.

8 BY MR. COLLIER:

9 Q. That's right. You've been here this morning listening to
10 the live witnesses; correct?

11 A. Yes. Up until now, I have been looking at depositions,
12 and it's nice to be able to actually hear the live witness,
13 yeah.

14 Q. Let's talk about the July 31 incident. What conclusions
15 did you draw about that incident?

16 A. Well, in that incident there really was not a full
17 investigation. I think that Mr. Kawasaki did the best he
18 could. He wasn't somebody who was trained to investigate. He
19 did some interviews, and then it should have been turned over
20 to somebody who really knew what they were doing who could do
21 an investigation.

22 And then he would have been one of the people they spoke
23 to since, according to him, there were people that he spoke to
24 right away who said they heard racial comments. You know,
25 there is a lot of discussion, was it the N-word, was it not?

1 From my point of view, I -- as soon as I hear "racial," I don't
2 care if it's the N-word or something else. I know that it's
3 something that's going to get a high priority, that I'm going
4 to be very concerned about.

5 And then the investigator would need to figure out what
6 was said by who. And here you have this conflicting
7 information of Mr. Kawasaki saying that he was told there were
8 racial comments and then ultimately some finding that there
9 wasn't corroboration of that. Although, as I said, even
10 without corroboration, there should be a finding based on a
11 preponderance of the evidence.

12 And there is no documentation anywhere of who did what.
13 It does not look like a real investigation, the way I would
14 expect it to look. There are no findings.

15 And then the remedial action is based on joking, not a
16 racial epithet.

17 Obviously, you are going to discipline somebody very
18 differently for joking than you are for using a racial epithet
19 or for joking even -- if they say it's joking, if it includes
20 racial comments, that's another level of seriousness.

21 And they skirted that issue.

22 **Q.** Let's talk about the October 2015 incident that's the next
23 slide. This is the elevator incident?

24 **A.** Correct. Right, right. And so in that incident, you have
25 some of the same issues of it not being clear who is in charge

1 of this investigation.

2 There was a possibility of getting some further video
3 footage. I don't know whether it would have existed or not,
4 but it certainly should have been explored.

5 And again, you have -- you don't -- I think, again, you
6 had Mr. Kawasaki who initially had some involvement but passed
7 it over, it not being his place to do that. And then,
8 ultimately, the -- the one person who might have been a witness
9 in addition to maybe getting that video footage wasn't
10 interviewed. There was no record of what that person had to
11 say?

12 And then it looks like they both ended up with a warning
13 when the investigator should be determining who did initiate
14 that argument and if, as Mr. Jackson was saying, it appeared
15 from the video that -- that Mr. Diaz was, like, going like
16 this, and there was -- he was not the aggressor, then that's
17 going to be relevant to the finding because you do need to
18 turn -- to figure out who the aggressor was, and you do need to
19 figure out whether there were racial statements made. So
20 they're both going to be important to your findings and then to
21 whatever disciplinary action is taken.

22 When you just throw up your hands and kind of give
23 everybody a warning, that's not sending the message that you
24 want to send.

25 **Q.** And what about the third incident, the jigaboo drawing?

1 **A.** Well, again, we heard of so many possible investigations,
2 and yet we don't have a report from any investigation.

3 You have Mr. Jackson doing some degree of investigation
4 but then not being empowered to do a full investigation. I'm
5 not clear, you know, what his training and experience was. He
6 said he did have HR experience, so he might have had the
7 qualifications to do it.

8 Ultimately, somebody else from Chartwell, I believe,
9 the -- Jackie Delgado did an investigation, but again, we don't
10 see any documentation, no witness notes, no findings.

11 There's -- the investigation that she did do, I believe,
12 was a phone call with Mr. Diaz, and we now do a lot of things
13 by phone after COVID. But we would at least do it now by video
14 because it's good to be able to have a conversation with
15 somebody where you're seeing each other and not just do it on
16 the phone. But then even worse than that, she sent written
17 questions to be answered by the -- the accused, Mr. Martinez.

18 And you can't evaluate information based on asking
19 somebody written questions and getting responses. You need to
20 be able to hear how they say things, follow up, probe, see if
21 there are pauses, see if they get upset by something, or
22 respond immediately. I mean, there are all sorts of ways you
23 have to evaluate information so that you can make those
24 credibility determinations? And there is there's -- written
25 questions is never going to be a successful way to do that.

1 There was also confusion -- I know there was an admission
2 that he did that, and there was confusion as to did he
3 apologize? Didn't he? A lot of people who are on the
4 receiving end don't really want an apology anyway. You know,
5 more importantly, did he recognize that what he had done was
6 wrong, and then why did he do it?

7 Because that's going to help you evaluate what kind of
8 action is appropriate. The fact that there were previous
9 complaints concerning him is going to be very relevant to that,
10 and so that should have been brought in as well.

11 It looked like they were deciding all of this -- what
12 should we do with him? -- before they had even done that
13 investigation and made those findings.

14 They're debating what to do just based on seeing the image
15 which was a very offensive image, but they hadn't done an
16 investigation to determine all that other information that
17 would then help them decide what level of disciplinary action
18 would be appropriate.

19 And I'm still confused about whether he really got that
20 suspension. I know it was in some of the e-mails, but there
21 were other e-mails that said he should just be warned and it
22 should be a verbal warning. And so just a --

23 **MR. SPIRO:** Objection to that.

24 **THE COURT:** Sustained.

25 \\

1 BY MR. COLLIER:

2 Q. I'm sorry. Setting aside --

3 THE COURT: Let's move onto --

4 BY MR. COLLIER:

5 Q. Setting aside the suspension issue, anything else you can
6 conclude about the third investigation we haven't talked about?

7 A. No. I think I'm good.

8 Q. Let's skip ahead to the last slide, please. This is where
9 you summarize your conclusions; correct?

10 A. Okay.

11 Tesla's policies are fine, but they were not being
12 enforced. There was not training and education. Supervisors
13 didn't understand things like that policies applied to
14 everybody on the premises, not just to employees. There
15 weren't clear point people who were doing investigations. They
16 weren't looking around them and hearing what was going on and
17 responding to known racial epithets.

18 They weren't consistently doing investigations. They
19 didn't -- there didn't appear to be a trained cadre of people
20 to do them, or if there were, I didn't see any evidence of that
21 in this case.

22 And then the remedial action was anemic. It was not
23 taking it at the level of seriousness that it should and
24 tending to just -- to let's give everybody a warning and move
25 on, rather than really deal with the issues that -- that it

1 needed to confront, the organization needed to confront in
2 order to have an effective program to address this.

3 **MR. COLLIER:** No further questions at this time,
4 Your Honor.

5 **THE COURT:** All right. Thank you.

6 So, Mr. Spiro, are you -- is your cross going to be less
7 than five minutes?

8 **MR. SPIRO:** Not less than five minutes but brief. I
9 don't want to set myself up with a five-minute bar that we've
10 set.

11 **THE COURT:** Okay. So, ladies and gentlemen, I think
12 we'll take the afternoon break for today. Some lawyers are
13 really great at estimating how long they're going to take, but
14 usually -- and this was true of me -- I was not -- sometimes I
15 was more optimistic.

16 So I think we'll just take our break, and we'll resume
17 with Ms. Oppenheimer tomorrow morning at 8:30.

18 Please come as promptly tomorrow as you did today. Stay
19 healthy. Be safe. Don't do any communicating with anybody.
20 Don't do any research and come back.

21 The trial is moving along well, and there is much more to
22 come. So you need to keep an open mind, and I will see you
23 tomorrow morning.

24 (Proceedings were heard outside the presence of the jury:)

25 **THE COURT:** You can step down. You are excused for

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1 today. Please be seated, everybody.

2 So the order of witnesses tomorrow?

3 **MR. ORGAN:** Oppenheimer, Romero, Martinez, Mr. Diaz,
4 and La'Drea. We have two videos.

5 **THE COURT:** I'm sorry. Who did you say after
6 Mr. Diaz?

7 **MR. ORGAN:** La'Drea Jones.

8 **THE COURT:** Yep.

9 **MR. ORGAN:** And then we've got two videos, Delgado and
10 McGinn, Heisen, and then Victor Quintero.

11 **THE COURT:** Okay. Great. So let me say one thing. I
12 want to be as clear as I can be. I thought I was clear in
13 the -- in the motions in limine. If you're -- step one, if
14 you're going to use a document that is not -- don't look so
15 startled, Mr. Spiro. Make just a -- sort of a calm pose in
16 your face.

17 **MR. SPIRO:** I apologize, Your Honor. It's been a long
18 day. I'm listening intently.

19 **THE COURT:** Good. That would be a good thing because
20 I don't want to have documents coming around the back door. I
21 don't want -- if I excluded a document in -- particularly in a
22 motion in limine, I understand the purpose of using it. I'm
23 not saying that it would absolutely be excluded, but I need to
24 see it. I need to know what the purpose of it is before you
25 try and do that.

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1 If it's a document that has never been discussed,
2 particularly one that's never been disclosed or wasn't
3 disclosed in discovery, that should never happen. That should
4 not darken the door of this case.

5 And I -- you may not have known how I deal with
6 depositions before -- before you started, but it's important
7 that when documents are disclosed to the jury, we're all on the
8 same page as to what can go up and what can't.

9 We don't have a separate -- typically, if a -- if there
10 was a document that nobody had seen before, it might be shown
11 to the jury -- to the witness, but not everybody else here.
12 It's disclosed everywhere.

13 We just can't do that, and that's the -- I lose control of
14 the courtroom when -- and I give it to the lawyers and their
15 very competent staff because it just makes a ton of sense to do
16 it that way. But you have to be absolutely on track for this.
17 And so I don't want that to happen again.

18 **MR. SPIRO:** It won't, Your Honor. We apologize for
19 the display of that exhibit. It obviously was happening in
20 real time. I did not realize it. I don't even have an ability
21 to sort of see.

22 I thought my colleague had said "showing just the
23 witness." I thought I heard that, but I didn't. I understand
24 it got put up on the screen, and we apologize.

25 Just so the Court knows, the other exhibit that you're

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1 referencing was not -- was not turned over in discovery because
2 it didn't respond to anything.

3 **THE COURT:** It doesn't matter.

4 **MR. SPIRO:** I just wanted the Court to know that,
5 though, because it's important to me, frankly, that the Court
6 knows that. It's not like that document was never disclosed or
7 something. It's just not responsive to a discovery request.

8 **THE COURT:** Just so that -- I know that you haven't
9 been at all of the -- at any of the pretrial conversations that
10 we have had which is sort of not what the rules require. They
11 require trial counsel to be here, but I get that you're a very
12 busy guy and that your client wants you to try this case.

13 But this case is about re-trying the damages. And as you,
14 I think, are well aware, the way that I'm trying to make this
15 happen is by using the same evidence as before and to get
16 another read on the damages because of the prior verdict and
17 the remittitur and the decisions that have been made.

18 So I don't want new documents flying in here, particularly
19 that I haven't seen.

20 **MR. SPIRO:** Understood.

21 Your Honor, the final issue that I just wanted to quickly
22 raise is one of the -- a concern was raised just that the live
23 stream is public, that just both sides inform their witnesses
24 to not access that, either. It's just a comment that was made
25 to me that I wanted to pass along for the Court, so it's --

1 **THE COURT:** Thank you for doing that.

2 **MR. SPIRO:** It's not meant to be -- I don't want to
3 belabor it. It's just a request that everybody ask their
4 witnesses to make sure they're not listening to the live
5 stream.

6 **THE COURT:** That certainly should not be happening,
7 and I didn't know that it was going out on the live stream. So
8 that's another issue that we ought to address, and I'll address
9 that after court.

10 **MR. SPIRO:** I didn't know, either, Your Honor. Thank
11 you.

12 **MR. COLLIER:** Your Honor, I just wanted to note from
13 the Plaintiff's perspective -- thank you.

14 Under the Federal rules, there's a voluntary disclosure
15 obligation of anything they thought was relevant to their
16 defense, and the idea that it wasn't requested in discovery is
17 a non-sequitur. It's irrelevant.

18 The more important issue is I'm concerned with those sorts
19 of excuses being made, that this is going to happen again.

20 Do we have an affirmative assurance from Defense Counsel
21 there are no new documents coming that weren't produced in
22 discovery? And can we get a copy of the one that they just
23 used?

24 **THE COURT:** Well, you should provide a copy of what
25 was used, but I don't need further assurances. I just got the

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1 assurances that I need. I have said, I think -- I think I've
2 been understood in what I said.

3 **MR. COLLIER:** Understood.

4 **MR. ALEXANDER:** Your Honor, two things. First, with
5 regard to the exhibit, it was on the screen for a while, and
6 I -- the jury I hope saw that you were upset about it, but I'm
7 not sure that -- I think that they were reading it at the point
8 when you got upset and you took it off the screen.

9 And so it would be good for them to know that's not an
10 exhibit. They should not consider anything in it. There is
11 some subject matter that is beyond the scope -- lots of subject
12 matter, but some specific that's beyond the scope of the first
13 trial that I would -- I would be concerned with jury knowing
14 that.

15 **THE COURT:** I think that that was on for about
16 two seconds, and if the jury was not aware that it was
17 inappropriate, I -- I'm not sure that they're sentient.

18 So I think that's -- I think I made myself clear enough,
19 and I don't think I need to go back into that again.

20 **MR. ALEXANDER:** The next question is with regard to
21 the Court's order, the Court -- the determination, Your Honor,
22 has already been made that Tesla is liable for the conduct that
23 occurred. And that's also based on the subcontractors.

24 A number of the questions are being asked as though Tesla
25 is not responsible because subcontractors engaged in the

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1 conduct.

2 And we've objected at various points, but it hasn't been
3 clear, I think, from our objection that that is the issue. But
4 that is the issue. Every time they get up and ask questions
5 and suggest that, oh, but that wasn't a Tesla employer, that
6 undermines.

7 I ask that there be some instruction indicating that with
8 regard to the subcontractors, the subcontractors are agents of
9 Tesla. And to the extent anything -- conduct occurs as to
10 subs, that is Tesla.

11 **MR. SPIRO:** Your Honor, I can just speak for myself.
12 I'm not -- I don't think I've asked any question -- I don't --
13 I'm not making any arguments regarding that.

14 Obviously that's not how I would have tried the case if I
15 had tried it. There's not going to be anything about that in
16 my summation. I mean, this is just not an issue in this case.

17 If there's one or two questions that come up about the
18 flow of things or something or who talked to who, that may come
19 up because it's relevant to understanding the trajectory and
20 whether Person A passed something on to Person B, but beyond
21 that --

22 **MR. COLLIER:** It sounds like we may be amenable to a
23 stipulation, if the subcontractors are agents of Tesla and
24 Tesla is responsible for what they do.

25 **MR. SPIRO:** Can I just ask another question that's

1 been bothering -- it may seem like a small thing, but I've
2 never had a case where when there's one person -- there's one
3 person on each side normally that responds and during this
4 case, all three of them stand even during objections. I've
5 never seen that before in 75 trials.

6 **THE COURT:** Fair enough.

7 So the -- with respect to the substantive issue, which was
8 raised, I think it's fair to point out the different -- because
9 it's factual and some of the witnesses, like Mr. Jackson, is
10 very aware of the different relationships of the staffing
11 entities. The instructions clearly identify Tesla as the
12 person that is -- has -- has been determined to be liable.

13 And to the extent that it's -- I'll consider a --
14 providing an instruction at the end of the case that clarifies
15 the relationships. So if there is -- and if you want to offer
16 something and -- you can share it with the Defense and then
17 we'll deal with it.

18 **MR. SPIRO:** Thank you, Your Honor.

19 **MR. COLLIER:** Thank you, Your Honor.

20 **THE COURT:** Great.

21 **MR. ALEXANDER:** I'm sorry. With regard -- our law
22 firms -- I think both law firms -- have the access streaming to
23 the law firms, and so you had referred to not knowing it was
24 being streamed out --

25 **THE COURT:** Oh, I see. I see. So, you know,

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1 streaming to the law firms because I suspect that people are
2 working, that's fine. I don't know who else is getting it.
3 We'll look -- I'll look into this and see what's going on.

4 And as to -- and the point that Mr. Spiro made, the --
5 whoever's witness it is is the person who makes objections and
6 stands up. And I appreciate that there are -- people have
7 different perspectives on -- on the Plaintiff's side on
8 different things, but it should really be one person who deals
9 with the witness. That's who want to hear from.

10 **MR. ORGAN:** Thank you, Your Honor.

11 **THE COURT:** Okay. See you tomorrow morning at
12 8:00 o'clock.

13 (Proceedings adjourned at 1:38 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, March 28, 2023

A handwritten signature in blue ink that reads "Marla Knox". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter